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Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Addendum

Observations on communications transmitted to Governments and replies received*

* Reproduced as received.

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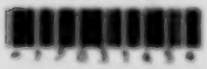

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Contents

		Page
I.	Introduction	5
II.	Observations by the former Special Rapporteur	5
	Afghanistan	5
	Argentina	6
	Australia	7
	Austria	9
	Bahrain	10
	Bangladesh	13
	Belarus	14
	Brazil	15
	Bulgaria	15
	Burundi	16
	China	17
	Colombia	18
	Croatia	19
	Democratic Republic of the Congo	20
	Dominican Republic	20
	Ecuador	22
	Egypt	22
	El Salvador	26
	France	28
	Gambia	29
	Greece	30
	Guatemala	31
	Indonesia	32
	Iran (Islamic Republic of)	37
	Israel	51
	Japan	56
	Jordan	58
	Kenya	59
	Korea (Republic of)	59
	Kuwait	60

Lebanon 61
Lesotho 62
Macedonia 62
Malaysia 64
Maldives 65
Mauritania 66
Mexico 66
Mozambique 69
Nauru 69
Pakistan 70
Peru 71
Philippines 72
Poland 72
Saudi Arabia 73
Serbia 76
Sierra Leone 77
Singapore 78
Slovenia 79
Somalia 80
South Sudan 80
Spain 81
Sudan 84
Tajikistan 85
Thailand 86
Tunisia 87
Turkey 87
Turkmenistan 87
Togo 88
Uganda 89
United Arab Emirates 90
United States of America 90
Uzbekistan 93
Venezuela (Bolivarian Republic of) 94
Vietnam 96
Other 98

Abbreviations

AL	Allegation Letter
JAL	Joint Allegation Letter
JOC	Joint Other Communications
JUA	Joint urgent appeal
OC	Other Communications
UA	Urgent appeal

Methodology

In cases where protection measures apply to one or more individuals, these are referred to as Mr. / Ms. X, Y, Z, etc. or, just as some specific locations are referred to as X, Y, Z, etc.

I. Introduction

1. The present document is submitted by the former Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, to the Human Rights Council, pursuant to its resolution 25/13.

2. In the present addendum, the former Special Rapporteur provides observations, where considered appropriate, on communications sent to States between 1 December 2015 and 31 August 2016, as well as on responses received from States in relation to these communications until 31 August 2016. In some instances and where appropriate, observations are provided to older communications which received a late reply within the above-named date range, as well as communications with updated replies following the request of the former Special Rapporteur (see additional observations). Communications sent and responses received during the reporting period are accessible electronically through hyperlinks.

3. The communications and the relevant replies can also be accessed via the incorporated links or in the communications reports of Special Procedures A/HRC/29/50 (communications sent, 1 December 2014 to 28 February 2015; replies received, 1 February to 30 April 2015); A/HRC/30/27 (communications sent, 1 March to 31 May 2015; replies received, 1 May to 31 July 2015); A/HRC/31/79 (communications sent, 1 June to 30 November 2015; replies received, 1 August 2014 to 31 January 2016); A/HRC/32/53 (communications sent, 1, December 2015 to 29 February 2016; replies received, 1 February to 30 April 2016); A/HRC/33/32 (communications sent 1 march to 31 May 2016; replies received 1 May to 31 July 2016); and A/HRC/34/75 (communications sent, 1 June to 30 November 2016; replies received 1 August 2016 to 31 January 2017).

II. Observations by the former Special Rapporteur

Afghanistan

JUA 03/05/2016 Case No. AFG 1/2016 State Reply: None to date. Allegations of imminent execution of twenty-two death row prisoners convicted for offences related to national security.

4. The Special Rapporteur regrets that the Government of Afghanistan has not replied to present communication, thereby failing to cooperate with the mandate issued by the Human Rights Council in its resolution 25/13.

5. In absence of information to the contrary, the Special Rapporteur concludes that there is substance in the allegations presented in the initial communication, available via link above, and is therefore of the view that the Government of Afghanistan, by applying the death penalty to individuals who may not have been convicted of "most serious crimes" and announcing the imminent execution of death row inmates, has violated the fundamental concepts of human dignity and the prohibition of torture and cruel, inhuman or degrading treatment or punishment, as provided by Article 6(2) and 7 of the International Covenant on Civil and Political Rights (ICCPR) and articles 1, 2, and 16 of Convention against Torture (CAT).

6. As observed by the Special Rapporteur in his 2012-report to the General Assembly (A/67/279), there is evidence of an evolving standard within international bodies and a

robust State practice to frame the debate about the legality of the death penalty within the context of the fundamental concepts of human dignity and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. This evolving standard, along with the resulting illegality of the death penalty under such prohibition, is developing into a norm of customary law, if it has not already done so (para. 74). Even if this customary norm is still under way, the Special Rapporteur considers that most conditions under which capital punishment is actually applied renders the punishment tantamount to torture and that under many other, less severe conditions, it still amounts to cruel, inhuman or degrading treatment (para. 75). The Special Rapporteur further recalls that the execution of a person who is either mentally disabled or a juvenile is *per se* a violation of an existing norm of customary international law (para 64). Moreover, the Rapporteur emphasizes that "the expression 'most serious crimes' must be read restrictively to mean that the death penalty should be a quite exceptional measure" (CCPR General Comment 6, 1982) and that they are defined as "cases where it can be shown that there was an intention to kill, which resulted in loss of life." (A/HRC/4/20, paras. 39-53 and 65)

7. The Special Rapporteur calls upon all States to reconsider whether the use of the death penalty per se respects the inherent dignity of the human person, causes severe mental and physical pain or suffering and constitutes a violation of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment (para. 79 A/67/279). Furthermore, as stated in his 2012 report (A/67/279), the Special Rapporteur calls upon the Government of Afghanistan to observe rigorously the restrictions and conditions imposed by ICCPR and CAT. Additionally, the Rapporteur strongly urges the Government to refrain from carrying out death sentences and abolish the practice of executions altogether.

Argentina

JAL 26/07/2016 Case No. ARG 2/2016 State Reply: 26/9/2016 and 02/10/2016 **Alegaciones sobre Sra. Belén quien fue condenada a 8 años de prisión después de haber sufrido, según consta, un aborto espontáneo.**

8. El Relator Especial agradece al Gobierno de Argentina por sus respuestas, de fechas 26 de septiembre del 2016 y 2 de octubre del 2016, acusando recibo de la presente comunicación.

9. El Relator Especial aprecia el esfuerzo del Gobierno en responder detalladamente a las inquietudes, obligaciones y preguntas presentadas en la comunicación inicial sobre las alegaciones acerca de la Sra. Belén, quien fue condenada a 8 años de prisión después de haber sufrido, según consta, un aborto espontáneo y sobre las medidas para garantizar su integridad física y mental y acceso a los recursos legales a que tuviere derecho.

10. El Relator toma nota de la información ofrecida por el Gobierno sobre las alegaciones de la condena de la Sra. Belén, la falta del debido proceso y la falta del derecho a la presunción de inocencia de la Sra. Belén. El Relator Especial también tuvo conocimiento de que la Sra. Belen fue puesta en libertad luego de que un tribunal ordenara su libertad y dejara sin efecto la prisión preventiva mientras el juicio continua. No obstante, el Relator desea hacer referencia al último informe temático sobre la tortura donde destacó que los órganos internacionales y regionales de derechos humanos han empezado a reconocer que los malos tratos infligidos a mujeres que solicitan servicios de salud reproductiva pueden causar enormes y duraderos

sufrimientos físicos y emocionales, provocados por motivos de género, y resaltó como un ejemplo principal la denegación de facto del acceso a servicios autorizados de salud como el aborto y la atención posaborto en circunstancias en que el derecho interno los permite. Además, la Sra. Belén parecía haber sufrido un aborto espontáneo, condición que no está tipificada como crimen en el código penal argentino.

11. Ante la falta de información que indique lo contrario, el Relator expresa preocupación en cuanto a la detención preventiva; la condena de la Sra. Belén, la falta del debido proceso y presunción de inocencia y las debilidades en el acervo probatorio, procedimientos arbitrarios, e inconsistencias en cuanto a las evidencias recolectadas.

Australia

JUA 01/06/2016 Case No. AUS 5/2016 State Reply: 14/07/2016 **Allegations of psychological abuse through solitary confinement, indefinite family separation, inadequate medical care, and detrimental living conditions of asylum seekers detained at the Regional Processing Centre on Nauru.**

12. The Special Rapporteur thanks the Government of Australia for its reply, dated 14 July 2016 to the present communication. He welcomes the Government's initiative to reunite Mr. Saghar with his family. In spite of the information supplied by the Government, its reply fails to inform the Special Rapporteur about the allegations concerning Ms. Narges Alizadeh, Mr. Daryosh Alizadeh, Mr. Jabar Hambavi and Mr. Musa Hamdavi. The Special Rapporteur hence finds that the Government, in its reply, does not sufficiently address the concerns, legal obligations, and questions raised in the initial communication, prompting him to infer that the Government fails to fully and expeditiously cooperate with the mandate issued by the Human Rights Council in its resolution 25/13.

13. In the absence of information to the contrary, the Special Rapporteur concludes that there is substance in the allegations presented in the initial communication, available via the link above, and is therefore of the view that the Government of Australia, by failing to provide adequate medical treatment, subjecting them to prolonged separation from their families, and failing to protect their physical and psychological integrity, causing some asylum seekers to attempt suicide, has violated the rights of Mr. Saghar, Ms. Narges Alizadeh, Mr. Daryosh Alizadeh, Mr. Jabar Hamdavi and Mr. Musa Hamdavi – and by subjecting Mr. Musa Humdavi to prolonged isolation for five weeks, has violated his right to be free from torture or cruel, inhuman or degrading treatment, as provided by articles 1, 2, and 16 of the Convention against Torture (CAT).

14. The Special Rapporteur would like to reiterate that the Government of Australia cannot relinquish its obligations under international law when privatizing the delivery of services that may impact upon the enjoyment of human rights. Contracting Broadspectrum and Wilson Security does not relieve the Government of Australia from the duty to exercise adequate oversight in order to meet human rights obligations as set out by the UN Guiding Principles on Business and Human Rights. (HR/PUB/11/04, Guiding Principle 5) Furthermore, in his interim report to the General Assembly of 5 August 2011 (A/66/268), the Special Rapporteur defined solitary confinement, in accordance with the Istanbul Statement on the Use and Effects of Solitary Confinement, as the physical and social isolation of individuals who are confined in their cells for 22 to 24 hours a day. He observed that while solitary confinement for short periods of time may be justified under certain circumstances, with adequate and effective safeguards in place, the use of prolonged (in excess of 15 days) or indefinite solitary confinement may

never constitute a legitimate instrument of the State, as it may cause severe mental and physical pain or suffering, a point which has been reiterated in paragraph 28 of the General Assembly resolution 68/156, stating that prolonged or indefinite solitary confinement runs afoul of the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment.

15. The Special Rapporteur urges the Government of Australia to fulfill its obligations under the CAT by immediately taking the necessary measures to protect the physical and psychological integrity of asylum seekers in detention and to provide adequate redress to the victims and undertake effective measures to prevent the recurrence of these acts.

JAL 05/08/2016 Case No. AUS 6/2016 State Reply: 06/10/2016 **Allegations of torture, ill-treatment, and prolonged solitary confinement of juvenile detainees in Don Dale detention centre in the Northern Territory.**

16. The Special Rapporteur thanks the government of Australia for its reply, dated 6 October 2016, to the present communication.

17. The Special Rapporteur acknowledges the account of the Government in response the concerns, legal obligations, and questions raised in the initial communication. He takes note of the information provided by the government indicating that the Northern Territory has accepted and implemented various recommendations proposed in the Vita Report, the Gwynne Report, and the Hamburger Report; that the individual alleged to have been responsible for the allegations is under investigation; that the use of hoods on children in detention has been ceased; and that a special taskforce within the Northern Territory Police Force was established to investigate allegations of violence against juvenile detainees.

18. However, the Special Rapporteur finds that the Government, in its reply, did not sufficiently address the practice of solitary confinement and detention conditions at the Don Dale center. In particular, no information has been provided as to whether the government has prohibited the practice of solitary confinement. Furthermore, the Royal Commission has not yet issued its report and, therefore, there is no information concerning any measures to redress the sanitary conditions, ventilation, access to light or running water of the Don Dale detention center, that lack of which violate the prohibition against torture and cruel, inhuman and degrading treatment as codified in the Convention Against Torture (CAT).

19. In the absence of information to the contrary, the Special Rapporteur concludes that there is substance in the allegations presented in the initial communication, available via the link above, and is therefore of the view that the Government of Australia, by failing to protect the physical and psychological integrity juvenile detainees at the Don Dale Detention Centre, including by subjecting them to prolonged solitary confinement and confining them in unsanitary and inadequate facilities, has violated the right of these detainees to be free from torture or other cruel, inhuman, or degrading treatment, as provided by articles 1, 2, and 16 of the CAT.

20. The Special Rapporteur reminds the Government that, as observed in his report on torture and other cruel, inhuman or degrading treatment or punishment (A/66/268), in which it is stated that the use of prolonged solitary confinement (more than 15 days) in itself runs afoul of the absolute prohibition of tore and other ill-treatment, as codified in articles 1, 2, and 16 of the CAT and article 37(a) of the Convention on the Right of the Child (CRC). Moreover, the Special Rapporteur has recommended that solitary confinement of children of any duration and for any purpose be prohibited.

Additionally, the Special Rapporteur would like to draw the attention of the Government to Rules 11–23 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the "Mandela Rules") which mandate that appropriate accommodation, minimum cubic content of air and floor space, lighting and ventilation should be provided, with requirements to be met regarding the personal hygiene of prisoners. Failure to comply with the minimum conditions of detention can amount to inhuman and degrading treatment.

21. The Special Rapporteur strongly urges the government of Australia to ensure that measures be immediately implemented to prohibit the solitary confinement of juveniles and the use of extreme restraint practices on detainees, especially juvenile offenders; to improve the conditions of detention centers in the Northern Territory; and to update the Special Rapporteur with any additional development regarding the investigation and resulting changes in response to the forthcoming report of the Royal Commission.

Austria

JUA 04/03/2016 Case No. AUT 1/2016 State Reply: 05/07/2016 **Allegations of participation in a Joint Statement leading to mass expulsion of asylum seekers in Macedonia, and sending officers to enforce this policy.**

22. The Special Rapporteur thanks the Government of Austria for its reply, dated 5 July 2016, to the present communication.

23. The Special Rapporteur takes note of the information provided by the Government concerning the allegations of the situation of asylum seekers in Austria. He welcomes the Government's reassurances that no asylum seeker will be turned away and that Austria will continue to fulfill its obligations under international law. However, in spite of the information supplied by the Government, the reply does not sufficiently address the concerns, legal obligations, and questions raised in the initial communication, prompting him to infer that the Government fails to fully and expeditiously cooperate with the mandate issued by the Human Rights Council in its resolution 25/13.

24. In light of the information provided in the Government's reply, the Special Rapporteur concludes that there is substance in the allegations presented in the initial communication, available via the link above, and is therefore of the view that the Government of Austria, by its support for the execution of the "Joint Statement of Heads of Police Services," including the secondment of 20 police officers to Macedonia, facilitates mass collective expulsions that amount to a violation of the non-refoulement principle, as provided by article 3 of the Convention against Torture (CAT).

25. The Special Rapporteur would like to reiterate that a State may be held responsible for its failure to pre-empt or remedy illicit conduct not directly attributable to it, such as when it fails to meet its due diligence obligations to prevent and protect persons from grave violations of human rights (A/70/303, para 70). "While clearly responsible for wrongful acts committed extraterritorially or having an extraterritorial effect, a State may also be responsible for 'indirectly attributable extraterritorial wrongfulness' owing to a failure to fulfill its positive human rights obligations" (A/70/303, para 35). Furthermore, the Rapporteur reminds the State that non-refoulement is "an inherent part of the overall absolute and imperative nature of the prohibition of torture and other forms of ill-treatment" (A/59/324, para. 28) and a rule of customary international law.

"The non-refoulement prohibition is codified in article 3 of the Convention, which is not geographically limited on its face" (A/70/303, para 38).

26. The Special Rapporteur concludes that the State's participation in these practices violates its positive obligations under the CAT, and strongly urges the government to explicitly reject the Joint Statement and to refrain from any activities supporting it. The Special Rapporteur further offers the services of his good offices to review multi-lateral policies or agreements for compliance with the prohibition of torture and cruel, inhuman or degrading treatment.

Bahrain

JUA 11/20/2015 Case No. BHR 7/2015 State Reply: 23/02/2016 **Allegations of the imminent execution of Mr. Mohammed Ramadan and Mr. Husain Ali Moosa following trials that did not meet international standards of fair trial and due process.**

27. The Special Rapporteur thanks the Government of Bahrain for its reply, dated 23/02/16, to the present communication.

28. The Rapporteur takes note of the information provided by the Government of the Al-Dair and the legal guarantees accorded to persons sentenced to death.

29. The Special Rapporteur however finds that the Government, in its reply, does not sufficiently address the concerns, legal obligations, and questions raised in the initial communication, which prompts him to conclude that the Government fails fully and expeditiously to cooperate with the mandate issued by the Human Rights Council in its resolution 25/13, as well as to comply with its obligation, under international customary law, to investigate, prosecute and punish all acts of torture and other cruel, inhuman or degrading treatment or punishment, as codified, inter alia, in the Convention against Torture (CAT).

30. In the absence of information to the contrary, the Special Rapporteur concludes that there is substance in the allegations presented in the initial communication, reiterated above, and thus, that the Government of Bahrain, by failing to protect the physical and psychological integrity of Mr. Ramadan and Mr. Moosa, exclude evidence obtained under torture or ill-treatment, and take steps to prevent their execution, has acted in discordance with article 15 of the CAT, and violated their right to be free from torture and other cruel, inhuman or degrading treatment or punishment as provided by articles 2, 12, and 16 or the CAT. The Special Rapporteur urges the State of Bahrain to refrain from executing these two persons.

JUA 14/12/2015 Case No. BHR 10/2015 State Reply: 18/01/2016 **Allegations concerning arbitrary detention, solitary confinement, and torture of individuals for the exercise of their rights to freedom of opinion and expression.**

31. The Special Rapporteur thanks the State of Bahrain for its reply, dated 18 December 2016, to present communication.

32. The Special Rapporteur takes note of the information provided by the Government regarding the investigations and charges brought against individuals for posts on social media. The Special Rapporteur regrets that the Government has failed to inform him about the use of solitary confinement, torture to extract confessions, and inadequate detention conditions, prompting him to infer that the Government has failed to fully and

expeditiously cooperate with the mandate issued by the Human Rights Council in its resolution 25/13.

33. In the absence of information to the contrary, the Special Rapporteur concludes that there is substance in the allegations presented in the initial communication, available via the link above, and is therefore of the view that the Government of Bahrain, by subjecting Mr. Ebrahim Karimi to prolonged solitary confinement and making verbal threats against his son; threatenening Mr. Husain Ali Isa Mahdi with electrocution, and hanging him while beating his hands and feet in the so-called "falaqa" position; and threatening Mr. Ali Ebrahim al Heli with physical violence until he confessed to an act that led to his conviction, has violated their right to be free from torture or cruel, inhumane or degrading treatment, as provided by article 1, 2, and 16 of the Convention Against Torture (CAT).

34. The Special Rapporteur highlights the Basic Princples for the Treatment of Prisoners which stresses that "all prisoners shall be treated with the respect due to their inherent dignity and value as human beings" (General Assembly resolution 45/111) . The Special Rapporteur further stresses that "solitary confinement is a harsh measure which may cause serious psychological and physiological harm" and finds that prolonged or indefinite confinement "to be contrary to one of the essential aims of the penitentiary system, which is to rehabilitate offenders and facilitate their reintegration into society" (A/66/268, para. 79).

35. In his interim report to the General Assembly of 5 August 2011 (A/66/268), the Special Rapporteur defined solitary confinement, in accordance with the Istanbul Statement on the Use and Effects of Solitary Confinement, as the physical and social isolation of individuals who are confined in their cells for 22 to 24 hours a day. He observed that while solitary confinement for short periods of time may be justified under certain circumstances, with adequate and effective safeguards in place, the use of prolonged (in excess of 15 days) or indefinite solitary confinement may never constitute a legitimate instrument of the State, as it may cause severe mental and physical pain or suffering, a point which has been reiterated in paragraph 28 of the General Assembly resolution 68/156. The Special Rapporteur strongly urges the Government of Bahrain to protect the rights of individuals to be free from torture or cruel, inhuman or degrading treatment and comply with its international legal obligations under the CAT.

JUA 04/07/2016 Case. No. BHR 3/2016 State Reply: 22/07/2016 and 15/08/2016
Allegations concerning the arbitrary arrest, detention, and charges brought against Mr. Nabeel Rajab, a human rights defender who has been repeatedly arrested and has served several prison sentences as a result of his human rights work and for leading a pro-democracy uprising in 2011.

36. The Special Rapporteur thanks the Government of Bahrain for its replies, dated 22 July 2016 and 15 August 2016, to the present communication, available via the link above.

37. The Special Rapporteur notes with concern the information provided by the Government that the Office of the Public Prosecutor arrested Mr. Rajab following a communication from the police to the effect that he had published and disseminated false and biased news, statements, and rumours about the regime in the Kingdom – including that it pursues a policy of repression and intimidation and of arresting opponents, commits the crimes of murder, torture, and sectarianism – which compromised the dignity and prestige of and undermined confidence in the Kingdom. He further takes note of the information that investigations and legal proceedings against Mr. Rajab are still pending; that Mr. Rajab was placed alone in a three-bed cell

on account of the fact that he was the only detainee in the detention facility; and that he was transferred to a hospital for two days' observation.

38. The Special Rapporteur however finds that the Government, in its reply, does not sufficiently address the allegations that Mr. Rajab was placed in prolonged solitary confinement; denied access to a lawyer and family visits aside from one fifteen-minute visit; and of his deteriorating health status, which may require specialized medical attention. Therefore, the response does not sufficiently address the concerns, legal obligations, and questions raised in the initial communication, and consequently fails to cooperate fully and expeditiously with the mandate issued by the Human Rights Council in its resolution 25/13.

39. The Special Rapporteur draws the attention of the State to the Standard Minimum Rules for the Treatment of Prisoners (reviewed on 5 November 2015 and renamed the "Mandela Rules") and in particular the clause that provides that all prisons shall ensure prompt access to medical attention in urgent cases. Prisoners who require specialized treatment or surgery shall be transferred to specialized institutions or to civil hospitals. Where a prison service has its own hospital facilities, they shall be adequately staffed and equipped to provide prisoners referred to them with appropriate treatment and care.

40. In the absence of information to the contrary, the Special Rapporteur concludes that there is substance in the allegations presented in the initial communication, available via the link above, and that the Government of Bahrain, by failing to protect the physical and psychological integrity of Mr. Rajab, has violated his right to be free from cruel, inhuman and degrading treatment, as provided by articles 2, and 16 of the CAT, and has failed to comply with its obligation to investigate, prosecute and punish all acts of torture and other cruel, inhuman or degrading treatment or punishment, as provided by articles 1, 2, and 16 of the Convention against Torture (CAT) to which Bahrain acceded on 6 March 1998.

JAL 15/08/2016 Case No. BHR 6/2016 State reply: 4/10/2016 **Allegations concerning the lack of investigation into complaints of torture and ill-treatment of Mr. Mohammed Ramadan, resulting in a false confession that led to his conviction and the imposition of the death penalty.**

41. The Special Rapporteur thanks the Government of Bahrain for its reply, dated 14 October 2016, to the present communication, available via the link above.

42. The Special Rapporteur takes note of the information provided by the Government that an examination by the medical examiner confirmed the existence of an injury on Mr. Ramadan's leg, of whose cause Mr. Ramadan reported being unaware. The Special Rapporteur further notes with concern the information that Mr. Ramadan, who did not confess to having committed the crimes of homicide, attempted homicide, and triggering an explosion, was sentenced on the basis of his admission that he participated in a demonstration, and on the basis of confessions made by other accused persons.

43. In spite of the information supplied by the Government, its reply fails to respond to the allegations that Mr. Ramadan was subjected to various forms of torture and ill-treatment by security forces for four consecutive days, leading to his forced confession, and to allegations of a lack of investigations into these allegations. The Special Rapporteur hence finds that the Government, in its reply, does not sufficiently address the concerns, legal obligations, and questions raised in the initial communication, which prompts him to conclude that the Government fails to fully and expeditiously cooperate with the mandate issued by the Human Rights Council in its resolution 25/13.

44. As observed by the Special Rapporteur in his 2012 report to the General Assembly (A/67/279), there is evidence of an evolving standard within international bodies and a robust State practice to frame the debate about the legality of the death penalty within the context of the fundamental concepts of human dignity and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. This evolving standard, along with the resulting illegality of the death penalty if imposed or executed under circumstances that violate such prohibition, is developing into a norm of customary law, if it has not already done so (para. 74). The Special Rapporteur calls upon all States to reconsider whether the use of the death penalty per se respects the inherent dignity of the human person, causes severe mental and physical pain or suffering and constitutes a violation of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment (para. 79). Even if this customary norm is still under way, the Special Rapporteur considers that most conditions under which capital punishment is actually applied renders the punishment tantamount to torture and that under many other, less severe conditions, it still amounts to cruel, inhuman or degrading treatment (para. 75).

45. Furthermore, in his interim report to the General Assembly of 5 August 2011 (A/66/268), the Special Rapporteur defined solitary confinement, in accordance with the Istanbul Statement on the Use and Effects of Solitary Confinement, as the physical and social isolation of individuals who are confined in their cells for 22 to 24 hours a day. He observed that while solitary confinement for short periods of time may be justified under certain circumstances, with adequate and effective safeguards in place, the use of prolonged (in excess of 15 days) or indefinite solitary confinement may never constitute a legitimate instrument of the State, as it causes severe mental and physical pain or suffering. Prolonged or indefinite solitary confinement runs afoul of the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment. Furthermore, due to the prisoner's lack of communication, as well as the lack of witnesses inside the prison, solitary confinement may also give rise to other acts of torture or ill-treatment.

46. In the absence of information to the contrary, the Special Rapporteur concludes that there is substance in the allegations presented in the initial communication, available via the link above, and is therefore of the view that the Government of Bahrain, by failing to provide any additional information or details about the investigation into Mr. Ramadan's allegations, particularly as regards the extraction of a confession under torture, and by sentencing him to death on the basis of a flawed process, has violated his right to be free from torture or cruel, inhuman or degrading treatment, as provided by art. 1, 2, 12, 15 and 16 of the CAT.

Bangladesh

47. JUA 29/07/2016 Case No. BGD 5/2016. State Reply: None to date **Allegations concerning the risk of execution of Mr. Mir Quasem Ali, following a trial by the Bangladesh International Crimes Tribunal that did not meet international standards on fair trial and due process.**

48. The Special Rapporteur regrets that the Government of Bangladesh has not replied to the present communication, thereby failing to cooperate with the mandate issued by the Human Rights Council in its resolution 25/13.

49. In the absence of information to the contrary, the Special Rapporteur concludes that there is substance in the allegations presented in the initial communication, available via the link above, and is therefore of the view that the Government of Bangladesh, by

sentencing Mr. Ali to death following a trial and appeal process that failed to meet international standards on fair trial and due process, including failure to safeguard fundamental rights under the Constitution of Bangladesh; lack of fairness and transparency; lack of separation between the executive and the judiciary; lack of independence and impartiality of the judiciary; lack of independence of the prosecutor; widespread allegations of prosecutorial and judicial misconduct; repeated failure to investigate allegations of perverting the course of justice; explicit exclusion of domestic criminal procedural rules; and failure to properly define the crimes, has violated his right to be free from torture or cruel, inhuman or degrading treatment, as provided by Article 6(2) and 7 of the International Covenant on Civil and Political Rights (ICCPR) and articles 1, 2, and 16 of Convention against Torture (CAT).

50. As observed by the Special Rapporteur in his 2012 report to the General Assembly (A/67/279), there is evidence of an evolving standard within international bodies and a robust State practice to frame the debate about the legality of the death penalty within the context of the fundamental concepts of human dignity and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. This evolving standard, along with the resulting illegality of the death penalty if imposed or executed under circumstances that violate such prohibition, is developing into a norm of customary law, if it has not already done so (para. 74). The Special Rapporteur calls upon all States to reconsider whether the use of the death penalty per se respects the inherent dignity of the human person, causes severe mental and physical pain or suffering and constitutes a violation of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment (para. 79). Even if this customary norm is still under way, the Special Rapporteur considers that most conditions under which capital punishment is actually applied renders the punishment tantamount to torture and that under many other, less severe conditions, it still amounts to cruel, inhuman or degrading treatment (para. 75).

51. The Special Rapporteur strongly urges the Government of Bangladesh to refrain from executing Mr. Ali and to abolish the practice of executions in general.

Belarus

JUA 25/08/2016 Case No. BLR 1/2016 State Reply: 21/09/2015 **Allegations concerning the imminent extradition of Mr. Chary Annamuradov, a Swedish and Russian citizen, from Belarus to Turkmenistan, where he risks being subjected to ill-treatment and torture.**

52. The Special Rapporteur thanks the Government of the Republic of Belarus for its reply, dated 21 September 2016, to the present communication.

53. The Special Rapporteur acknowledges the comprehensive account of the Government in response to the concerns, legal obligations, and questions raised in the initial communication. He welcomes the information provided by the Government according to which, the General Prosecutor's Office refused the extradition of Mr. Annamuradov, who was consequently released from custody, and reportedly returned to Sweden.

54. The Special Rapporteur welcomes the decision of the Government of the Republic of Belarus to refrain from extraditing Mr. Annamuradov and thereby comply with article 3 of the Convention against Torture (CAT). The Rapporteur encourages the Government to continue its engagement with the mandate.

Brazil

UA 08/07/2016 Case No. BRA 5/2016 State Reply: 05/08/2016 **Alegaciones relativas al proyecto No. 33 de propuesta de reforma constitucional que permite que los niños de edades entre 16 y 18 años puedan ser tratados como adultos en ciertos casos penales.**

55. El Relator Especial agradece al Gobierno de Brasil por su respuesta a la comunicación, de fecha 5 de agosto de 2016.

56. Además, él toma nota de la información proporcionada por el Gobierno al respecto de los alegatos de la posible violación de los derechos de los niños por el proyecto de reforma constitucional. Sin embargo, el Relator Especial también lamenta no haber contado con la información adicional que el Gobierno de Brasil prometió acerca de los alcances que dicho proyecto tendría en los menores de edad. Por lo tanto, el Relator considera que la respuesta del Gobierno no aborda suficientemente las inquietudes, obligaciones y preguntas de la comunicación inicial y, por ello, considera que existe una falta de cooperación con el mandato realizado por el Consejo de Derechos Humanos en su resolución 25/13.

57. El Relator Especial expresa preocupación grave con relación a los derechos de los menores de edad frente al sistema de justicia penal. El proyecto de reforma de la ley prevé una vía de excepción para tratar como criminales adultos a los niños de 16 y 17 años, lo que constituiría una violación del Convención contra la Tortura (CCT) en sus artículos 1, 2 y 16.

58. El Relator Especial quisiera recordarle al Gobierno de Brasil sobre las conclusiones incluidas en el informe sobre los niños privados de libertad: "En lo referente a los niños privados de libertad en el marco del sistema de justicia penal, el Relator Especial recuerda que la imputación, proceso y condena de niños debe enmarcarse en un sistema de justicia juvenil del Estado, brindándoles formas adecuadas de protección y nunca en el contexto de los sistemas de justicia penal de adultos. Además, las leyes, políticas y prácticas que permiten que los niños reciban condenas de adultos son intrinsecamente crueles, inhumanas y degradantes porque no toman en consideración ninguna de las medidas especiales de protección o salvaguardias que el derecho internacional exige para los niños. Nunca debe tratarse a los niños como si fueran adultos. Teniendo en cuenta que están emocional y psicológicamente menos desarrollados y que son menos culpables de sus acciones, la condena que se les imponga debe responder al principio de rehabilitación y reintegración" (A/HRC/28/68, párrafo 73).

59. En este contexto, el Relator Especial exhorta al Gobierno de Brasil a que se aseguren la integridad física y emocional de los menores de 16 y 17, en conformidad con las obligaciones pactadas en la CCT. Además, el Relator ofrece sus asistencia y consejo en esta materia para asegurar que la legislación propuesta cumple plenamente con las obligaciones del Gobierno de Brasil bajo la CCT y el derecho internacional consuetudinario.

Bulgaria

JAL 31/03/2016 Case No. BGR 1/2016 State Reply: 31/05/2016 **Allegations of mistreatment of asylum seekers and migrants by law enforcement officials, involving excessive use of force, threats to their physical and mental integrity, confiscation of possessions, extortion of money, summary returns at the Turkish**

border, and the systematic detention of asylum seekers and migrants, including children, in overcrowded and unsanitary conditions.

60. The Special Rapporteur thanks the Government of Bulgaria for its reply, dated 14 April 2016, to the present communication, available via the link above.

61. The Special Rapporteur welcomes information that internal checks performed by the Ministry of Interior directorate responsible for territory serviced by the Border Police resulted in a finding of two cases of misconduct by officers, and that relevant disciplinary sanctions have been imposed. The Special Rapporteur takes note of the information that an investigation and pre-trial proceedings have been initiated into the death of an Afghan citizen following the "surpassing [of] the limits of self-defence by an officer of the Border Police," and expects to be kept fully informed of the outcome of the investigation and proceedings.

62. The Special Rapporteur however finds that the Government, in its reply, does not sufficiently address the allegations of the use of physical violence against, and forcible blocking of entry, of at least 59 asylum seekers between March and November 2015, and the systematic detention of migrants for prolonged periods of up to 18 months, in conditions that amount to ill-treatment.

63. In the absence of information to the contrary, the Special Rapporteur concludes that there is substance in the allegations presented in the initial communication, available via the link above, and that the Government of Bulgaria, by failing to protect the physical and psychological integrity of migrants at its borders and in immigration detention facilities, including by failing to prevent ill-treatment in the form of physical violence and inhumane conditions of detention, has violated their rights to be free from cruel, inhuman and degrading treatment, as provided by articles 2 and 16 of the Convention against Torture.

Burundi

UA 11/02/2016 Case No. BDI 1/2016 State Reply: None to date **Allégations de torture, de mauvais traitement, détention arbitraire, et l'isolement cellulaire pendant 9 mois de M. Cyrille Ndayirukiye de la part de représentants de l'Etat.**

64. Le Rapporteur spécial regrette que le gouvernement de Burundi n'ait pas répondu à la présente communication, échouant ainsi à coopérer avec le mandat émis par le Conseil des droits de l'homme dans sa résolution 25/13.

65. En l'absence d'information prouvant le contraire, le Rapporteur conclut qu'il y a de la substance quant aux allégations présentées dans la communication initiale, réitérées ci-dessus, et donc, que le gouvernement de Burundi par la détention arbitraire de M. Ndayirukiye, en le torturant, en le prolongeant son isolement cellulaire, en le détenant dans des mauvaise conditions (conditions précaires et dangereuses, mauvaise conditions d'hygiène, visites interdites) et en congédiant les avocats de M. Ndayirukiye a violé le droit de M. Ndayirukiye de ne pas être soumis à la torture et autres peines ou traitements cruels, inhumains ou dégradants, comme prévu dans les articles 1, 2, 11 et 16 de la Convention Contre la Torture, les articles 9 et 14 de la Pacte international relatif aux droits civils et politiques, et les articles 5, 6 et 7 de la Commission Africaine des Droits de l'Homme et des Peuples et Principe 6 des Principes de base relatifs au rôle de barreau.

66. Dans le rapport intérimaire de 5 août 2011 du Rapporteur spécial au Assemblée Générale des Nations Unies (A/66/268), le Rapporteur spécial a défini le prolongé isolement, en accordance avec le Déclaration d'Istanbul sur le recours à l'isolement cellulaire et les effets de cette pratique, comme l'isolement physique et sociale des individus qui sont confiés dans leurs cellules pour 22 à 24 heures par jour. Il note qu'autant l'isolement cellulaire peut être justifiées pour de courtes périodes à cause de certaines circonstances et avec des garanties suffisantes, l'usage d'isolement cellulaire prolongé (plus de 15 jours) ou l'isolement cellulaire indéfini peut jamais constituer un instrument légitime, car ça peut engendrer des souffrances mentales et physiques graves. Cela a été réitéré par l'Assemblée Générale des Nations Unies dans paragraphe 28 de la résolution 68/156 sur Torture et autres peines ou traitements cruels, inhumains ou dégradants. En plus, par le manque de communication, et le manque de témoins dans le prison, l'isolement cellulaire peux donner lieu à des autres actes de torture ou des mauvais traitements.

67. Dans ce contexte, le Rapporteur spécial exhorte le gouvernement du Burundi à considérer tous les mesures nécessaires pour assurer l'intégrité physique et psychologique de M. Ndayirukiye et de diligenter une enquête sur les violations perpétrées et de traduire les responsables en justice.

China

JUA 03/06/2016 Case No. CHN 4/2016 State Reply 05/08/2016 **Allegations concerning the continued detention, denial of medical care and serious deterioration in health, and ill-treatment of seven human rights defenders.**

68. The Special Rapporteur thanks the Government of China for its reply, dated 5 August 2016, to the present communication.

69. He regrets that, as of the drafting of this report, no official translation is available to the Government's reply of 5 August 2016.

70. The Special Rapporteur will make his views on the case known later on, after being able to read an English version of the reply.

JUA 20/07/2016 Case No. CHN 6/2016 State Reply: None to Date **Allegations concerning the on-going arbitrary detention, torture and ill-treatment, and serious health condition of human rights defender Mr. Yang Maodong, commonly known by his pen-name Guo Feixiong.**

71. The Special Rapporteur regrets that the Government of China has not replied to the present communication, thereby failing to cooperate with the mandate issued by the Human Rights Council in its resolution 25/13.

72. In the absence of information to the contrary, the Special Rapporteur concludes that there is substance in the allegations presented in the initial communication, available via the link above, and is therefore of the view that the Government of China, by arbitrarily detaining Mr. Guo, subjecting him to a humiliating medical procedure and other cruel and degrading treatment; denying him adequate medical care; and force-feeding him in response to his embarking on a hunger strike, has violated his right to be free from torture or cruel or degrading treatment as provided by Article 1, 2 and 16 of the Convention against Torture (CAT).

73. The Special Rapporteur wishes to stress that "feeding induced by threats, coercion, force or use of physical restraints of individuals, who have opted for the extreme

recourse of a hunger strike to protest against their detention, are, even if intended for their benefit, tantamount to cruel, inhuman and degrading treatment" (OHCHR, Joint Press Release, 28 July 2015).

74. The Special Rapporteur draws the attention of the Government to the U.N. Standard Minimum Rules for the Treatment of Prisoners ("Mandela Rules") and, in particular, Rule 27(1), which provides that "[a]ll prisons shall ensure prompt access to medical attention in urgent cases. Prisoners who require specialized treatment or surgery shall be transferred to specialized institutions or to civil hospitals. Where a prison service has its own hospital facilities, they shall be adequately staffed and equipped to provide prisoners referred to them with appropriate treatment and care."

75. The Special Rapporteur urges the Government to comply with its obligation, under international customary law, to prevent, investigate, prosecute and punish all acts of torture and other cruel, inhuman or degrading treatment or punishment, as codified, inter alia, in the CAT.

Colombia

JAL 04/07/16 Case No. COL 6/2016 State Reply: 29/08/2016 and 12/10/2016
Alegaciones sobre el uso desmedido de la fuerza por parte de agentes policiales y militares y la estigmatización de los manifestantes indígenas y sus demandas durante la realización de la Minga.

76. El Relator Especial agradece al Gobierno de Colombia por sus respuestas, de fechas 29 de agosto del 2016 y 12 de octubre del 2016, acusando recibo de la presente comunicación.

77. El Relator Especial aprecia el esfuerzo del Gobierno en responder detalladamente a las inquietudes, obligaciones y preguntas presentadas en la comunicación inicial sobre las alegaciones del uso desmedido de la fuerza por parte de agentes policiales y militares y la estigmatización de los manifestantes indígenas y sus demandas durante la realización de la Minga.

78. El Relator Especial toma nota de la información ofrecida por el Gobierno sobre la veracidad de las alegaciones presentadas; sobre la existencia de quejas presentadas por las víctimas o en nombre de ellas; sobre las medidas adoptadas para garantizar la protección de los derechos humanos; sobre las investigaciones que se encuentran en curso a raíz de los homicidios, detenciones y judicialización de personas indígenas durante la Minga.

79. No obstante, el Relator Especial desea hacer referencia al principio 4 de los Principios Básicos sobre el Empleo de la Fuerza y de Armas de Fuego por los Funcionarios Encargados de Hacer Cumplir la Ley que establece que "[l]os funcionarios encargados de hacer cumplir la ley, en el desempeño de sus funciones, utilizarán en la medida de lo posible medios no violentos antes de recurrir al empleo de la fuerza y de armas de fuego." Además, el principio 5 establece que "cuando el empleo de las armas de fuego sea inevitable, los funcionarios encargados de hacer cumplir la ley: a) Ejercerán moderación y actuarán en proporción a la gravedad del delito y al objetivo legítimo que se persiga; b) Reducirán al mínimo los daños y lesiones y respetarán y protegerán la vida humana; c) Procederán de modo que se presten lo antes posible asistencia y servicios médicos a las personas heridas o afectadas; d) Procurarán notificar lo sucedido, a la menor brevedad posible, a los parientes o amigos íntimos de las personas heridas o afectadas."

80. A pesar de la voluntad de cooperación con el Relator Especial y de que el Gobierno de Colombia se encuentra cumpliendo con la obligación emanada de la norma consuetudinaria internacional de investigar, juzgar y sancionar todos los actos de tortura y tratos crueles, inhumanos o degradantes, como establece, inter alia, la Convención contra la Tortura (CAT), el Relator Especial concluye que, al no tomar medidas para prevenir la desaparición y homicidio de varios manifestantes, ha violado sus derechos a no ser torturados o sometidos a tratos crueles, inhumanos o degradantes como afirma el derecho internacional consuetudinario codificado en los artículos 1 y 16 del CAT.

81. En cuanto al accionar del Gobierno en la manifestación, el Relator Especial concluye que el Gobierno de Colombia al no tomar medidas para proteger la integridad física de los manifestantes, ha violado el derecho los manifestantes a no ser sometidos a tratos crueles, inhumanos o degradantes como afirman los artículos 1 y 16 del CAT. Sin embargo, el Relator Especial insiste en conocer el resultado de las investigaciones sobre el uso desmedido de la fuerza por parte de agentes policiales y militares y la estigmatización de los manifestantes indígenas y sus demandas durante la realización de la Minga.

Croatia

JUA 04/03/2016 Case No. HRV 1/2016 State Reply: 02/08/16 **Allegations concerning plans to increase policing along the former Yugoslav Republic of Macedonia's southern border, in violation of the principle of non-refoulement.**

82. The Special Rapporteur thanks the Government of Republic of Croatia for its reply, dated 8 February 2016, to the present communication.

83. The Special Rapporteur takes note of the information provided by the Government regarding the registration and identification procedures of migrants, and the national laws on non-refoulement. He welcomes the Government's claim that its police stationed in Macedonia have received training on basic human rights and rights of migrants, and that migrants within Croatia were processed in compliance with international law and the Dublin Regulation. However, in spite of the information supplied by the Government, its reply fails to inform the Rapporteur concerning the Government's role in enabling the collective expulsion of non-nationals at Macedonia's southern border, as a result of the "Joint Statement of Heads of Police Services" and Croatian police presence on the border. The Rapporteur hence finds that the Government, in its reply, does not sufficiently address the concerns, legal obligations, and questions raised in the initial communication, which prompts him to infer that the Government fails to fully and expeditiously cooperate with the mandate issued by the Human Rights Council in its resolution 25/13.

84. In the absence of information to the contrary, the Special Rapporteur concludes that there is substance in the allegations presented in the initial communication, available via the link above, and that the Government, by participating in, and being party to the Joint Statement, did not comply with its positive obligation to prohibit non-refoulement at Macedonia's southern border. By denying persons an opportunity to make a proper claim for protection, and enabling their return to places where they may face torture or other cruel, inhuman or degrading treatment or punishment, Croatia has violated its obligation under articles 1, 2, 3, and 16 of the Convention against Torture (CAT).

85. The Special Rapporteur would like to draw the Government's attention to his 2015 thematic report addressing the extraterritorial application of the prohibition of torture,

where he stated, "the obligation to respect the human rights of all persons applies whenever States affect the rights of individuals abroad through their acts or omission" and that "the obligation to take measures to prevent acts of torture or other ill-treatment includes actions that a State takes in its own jurisdiction to prevent such acts in another jurisdiction." (A/70/303, para. 14, 38).

86. The Special Rapporteur strongly urges the Government of the Republic of Croatia to take measures to ensure that its procedures and involvement at Macedonia's southern border are brought fully in line with its non-refoulement obligations under international law.

Democratic Republic of the Congo

JUA 12/05/2016 Case No. COD 3/2016 State Reply: None to date **Allégations concernant l'arrestation, la détention arbitraire, des tortures, et de mauvais traitements de M. Kalonji par la police judiciaire.**

87. Le Rapporteur spécial regrette que le gouvernement de la République Démocratique du Congo n'a pas répondu à la présente communication, échouant ainsi à coopérer avec le mandat émis par le Conseil des droits de l'homme dans sa résolution 25/13.

88. En l'absence d'information prouvant le contraire, le Rapporteur conclut qu'il y a de la substance aux allégations présentées dans la communication initiale, réitérées ci-dessus, que le gouvernement de la République Démocratique du Congo, (1) en arrêtant arbitrairement M. Jean-Marie Kalonji et en le torturant dans le but d'obtenir une déclaration sur son implication dans l'organisation d'un mouvement insurrectionnel et les nom de ces complices allégués, (2) en lui fessant subir de mauvais traitements et de mauvaises conditions de détention, incluant l'insuffisance de nourriture, a violé le droit de M. Kalonji de ne le pas soumettre à la torture et autres peines ou traitements cruels, inhumains ou dégradants comme prévu dans l'article 7 du Pacte International relatif aux Droits Civils et Politiques (PIDCP) et les articles 1, 2, et 16 de la Convention contre la torture (CCT).

89. En particulier, le Rapporteur spécial souhaiterait aussi attirer l'attention du gouvernement sur les articles 1 et 22 des Règles minimales de Nations Unies pour le traitement des détenus (comme révisés le 22 mai 2015) selon lesquelles M. Kalonji a eu le droit d'être traité avec le respect dû à la dignité et à la valeur inhérentes à la personne humain et avec l'alimentation.

90. Le Rapporteur spécial exhorte le gouvernement à enquêter tous les cas de torture, à poursuivre et punir les responsables, en fournissant une réparation intégrale pour la victime et sa famille, y compris une indemnisation équitable et adéquate, et d'empêcher la réitération de telles pratiques.

Dominican Republic

JOL 12/02/2016 Case No. DOM 1/2016 State Reply: None to date **Alegaciones relativas al restablecimiento del Código Penal de 1884, que criminaliza el aborto en todos los casos.**

91. Especial lamenta que el Gobierno de República Dominicana no haya respondido a la comunicación, de fecha 12 de febrero de 2016, y por ello, considera que existe una

falta de cooperación con el mandato realizado por el Consejo de Derechos Humanos en su resolución 25/13.

92. Ante la ausencia de información que contradiga lo argumentado, el Relator Especial concluye que hay fundamentos suficientes en los argumentos presentados, disponibles en el enlace señalado anteriormente, para señalar que el Gobierno de República Dominicana, por haber restablecido las disposiciones del Código Penal de 1884 que criminalizan el aborto en todos los casos, como consecuencia directa del fallo del Tribunal Constitucional de la Republica Dominicana que declaró inconstitucional el procedimiento de adopción del Código Penal, ha violado sus obligaciones de proteger la integridad física y psicológica de las mujeres y adolescentes embarazadas, y ha violado respecto de ellas la prohibición del trato cruel, inhumano o degradante contenida en el artículo 16 de la Convención.

93. El Relator Especial quisiera recordarle al Estado su informe temático número A/HRC/31/57, en el que señaló que "la existencia de leyes muy restrictivas, que prohíben los abortos incluso en casos de incesto, violación, deficiencia fetal o cuando está en riesgo la vida o la salud de la madre, vulneran el derecho de las mujeres a no ser sometidas a tortura o malos tratos" (para. 43), y que "los Estados tienen la obligación afirmativa de reformar las leyes restrictivas sobre el aborto que perpetúan la tortura y los malos tratos al negar a las mujeres el acceso al aborto y la asistencia en condiciones de seguridad" (para. 44). Asimismo, el Relator Especial recuerda al Estado las observaciones contenidas en su informe número A/HRC/31/57/Add.1, donde expresó su "preocupación por la persistencia de la total prohibición del aborto, que afecta particularmente a mujeres de escasos recursos económicos y con un nivel menor de educación, sin consideración alguna a situaciones excepcionales" (para. 108).

94. En consecuencia, el Relator Especial exhorta al Estado a adecuar su legislación interna para resguardar el derecho de las mujeres a no ser sometidas a tratos crueles, inhumanos o degradantes, de conformidad con las obligaciones que emanan de los artículos 1 y 2 en relación con el artículo 16 de la Convención.

JOL 25/07/16 Case No. DOM 3/2016 State Reply: None to date **Alegatos de la discriminación contra la mujer en la legislación y en la práctica dada la reforma del código penal del Estado.**

95. El Relator Especial lamenta que, hasta la fecha, el Gobierno de la República Dominicana no haya respondido a la presente comunicación, y por ello, considera que no ha cumplido con su deber de cooperar con el mandato establecido por el Consejo de Derechos Humanos en la resolución 25/13.

96. Asimismo, el Relator Especial considera que el Gobierno no ha cumplido con su obligación afirmativa de reformar las leyes restrictivas sobre el aborto que perpetúan la tortura y los malos tratos al negar a las mujeres el acceso al aborto y la asistencia en condiciones de seguridad.

97. Ante la falta de información que indique lo contrario, el Relator concluye que el Gobierno de la República Dominicana está en riesgo de violar la Convención Contra la Tortura (CAT). La reforma del código penal recientemente aprobada por la Cámara de Diputados del Congreso dominicano autoriza el aborto sólo en caso de riesgo para la vida de la mujer o la niña embarazada. Se expresa preocupación en cuanto al retroceso para los derechos de las mujeres y las niñas en comparación con el texto de la Ley 550-14 aprobada en el 2014.

Ecuador

JUA 14/07/2016 Case No. ECU 3/2016 State Reply: 27/10/2016 **Alegaciones de desalojo violento de una manifestación pacífica, la detención de 140 migrantes, de los cuales 94 habrían sido trasladados a Cuba sin que se hayan cumplido todas las garantías del debido proceso y en contravención del principio de no devolución.**

98. El Relator Especial agradece al Gobierno de Ecuador por su respuesta, de fecha 27 de octubre del 2016, acusando recibo de la presente comunicación.

99. El Relator Especial aprecia el esfuerzo del Gobierno en responder detalladamente a las inquietudes, obligaciones y preguntas presentadas en la comunicación inicial sobre las alegaciones de desalojo violento de una manifestación pacífica, la detención de 140 migrantes, de los cuales 94 de ellos habrían sido trasladados a Cuba sin que se hayan cumplido todas las garantías del debido proceso y en contravención del principio de no devolución.

100. El Relator Especial toma nota de la información ofrecida por el Gobierno sobre las alegaciones, sobre las peticiones de habeas corpus y sobre los procedimientos de traslado.

101. No obstante, el Relator Especial desea hacer referencia al Pacto Internacional de Derechos Civiles y Políticos (PIDCP), artículos 13, 14 y 21 al igual que llamar la atención sobre la Convención contra la Tortura y Otros Tratos o Penas Crueles, Inhumanos o Degradantes, que consagra el principio de no devolución, precisando en su artículo 3 que "ningún Estado Parte procederá a la expulsión, devolución o extradición de una persona a otro Estado cuando haya razones fundadas para creer que estaría en peligro de ser sometida a tortura."

102. Ante la falta de información suficiente que indique lo contrario, el Relator concluye que el Gobierno de Ecuador, al no tomar medidas para prevenir la violación a la integridad física y la salud de los ciudadanos cubanos, y al no investigar las peticiones de habeas corpus ha violado el derecho de no devolución en el artículo 3 de la Convención contra la Tortura (CAT).

Egypt

JUA 17/12/2015 Case No. EGY 17/2015 State Reply: 02/02/2016 Allegations concerning Mr. Mahmoud Mohamed Ahmed Hussein, who was tortured and forced into confession during his pre-trial detention and interrogations.

103. The Special Rapporteur thanks the Government of the Arab Republic of Egypt for its reply, dated 2 February 2016, to the present communication.

104. The Special Rapporteur takes note of the information provided by the Government that indicates that Mr. Hussein is still under pre-trial detention in Wadi el-Natrun Prison Complex, and that his detention has been extended. In spite of the information supplied by the Government, there is an absence of sufficient information regarding the alleged torture and ill-treatment of Mr. Hussein, as well as the conditions of his detention The Special Rapporteur finds that the Government, in its reply, does not sufficiently address the concerns, legal obligations, and questions raised in the initial communication, which prompts him to infer that the Government fails to fully and expeditiously cooperate with the mandate issued by the Human Rights Council in its resolution 25/13.

105.In the absence of information to the contrary, the Special Rapporteur hence concludes that there is substance in the allegations presented in the initial communication, available via the link above, and is therefore of the view that that the Arab Republic of Egypt, by failing to protect the physical and psychological integrity of Mr. Hussein and to exclude evidence obtained under torture or ill-treatment, has violated Mr. Hussein's rights under article 1, 2, 15 and 16 of the Convention against Torture (CAT).

106.The Special Rapporteur strongly urges the Government of the Arab Republic of Egypt to comply with its obligation, under international customary law, to investigate, prosecute, and punish all acts of torture and other cruel, inhuman, or degrading treatment or punishment, as codified, inter alia, in the Convention against Torture (CAT).

JAL 8/02/2016 Case No. EGY 1/2016 State Reply: None to date Allegations of ongoing detention and prolonged solitary confinement of Mr. Hisham Ahmed Awad Jafar in the absence of formal charges.

107.The Special Rapporteur regrets that the Government of Egypt has not replied to the present communication, thereby failing to cooperate with the mandate issued by the Human Rights Council in its resolution 25/13.

108.In the absence of information to the contrary, the Special Rapporteur concludes that there is substance in the allegations presented in the initial communication, available via the link above and is therefore of the view that the Government of Egypt, by detaining and subjecting Mr. Jafar to solitary confinement without formal charges since October 2015, violates his right to be free from torture or cruel, inhuman or degrading treatment as provided by articles 1, 2 and 16 of the Convention against Torture.

109.In his interim report to the General Assembly of 5 August 2011 (A/66/268), the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment defined solitary confinement, in accordance with the Istanbul Statement on the Use and Effects of Solitary Confinement, as physical and social isolation of individuals who are confined in their cells for 22 to 24 hours a day. He observed that while solitary confinement for short periods of time may be justified under certain circumstances, with adequate and effective safeguards in place, the use of prolonged (in excess of 15 days) or indefinite solitary confinement may never constitute instruments of the State, as it may cause severe mental and physical pain or suffering, a point which has been reiterated in paragraph 28 of the General Assembly resolution 68/156. Prolonged or indefinite solitary confinement runs afoul of the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment.

110.It has come to the attention of the Special Rapporteur that, as of the drafting of this report, Mr. Jafar continues to be detained in solitary confinement without formal charges or access to his family. The Special Rapporteur urges the State to take all necessary interim measures to ensure the full protection of Mr. Jafar against any violation of his human rights, especially his incommunicado detention in solitary confinement. Furthermore, the Special Rapporteur calls upon the Government of Egypt to comply with its obligation, under international customary law, to investigate, prosecute and punish all acts of torture and other cruel, inhuman or degrading treatment or punishment, as codified, inter alia in the Convention against Torture.

JAL 23/02/2016 Case No. EGY 3/2016 State Reply 23/02/2016 Allegations concerning the closure of the human rights organization "Nadeem Center for the Rehabilitation of Victims of Violence and Torture" pursuant to an administrative closing order issued in accordance with NGO Law (84/2002).

111. The Special Rapporteur thanks the Government of the Republic of Egypt for its reply, dated 23 February 2016, to the present communication, available via the link above.

112. The Special Rapporteur takes note with serious concern of the information provided by the Government that the order of administrative closure for the Nadeem Center for the Rehabilitation of Victims of Violence and Torture was issued pursuant to the Medical Establishments Act No. 51/1981, on the grounds that the Center engaged in "unlicensed activities" by having "published reports through an international information network concerning alleged cases of torture and victims of violence against women."

113. The Special Rapporteur reiterates his concern that the closure_amounts to an attempt to restrict the human rights work of the organization, and especially the documentation and reporting of human rights violations such as torture and other forms of ill-treatment, as well as to restrain the legitimate exercise of the rights to freedom of association and freedom of expression of its members, and that the closure will have a "chilling effect" on civil society and human rights defenders exercising their rights to freedom of association and freedom of expression as a whole, and particularly on those with dissenting opinions.

114. The Special Rapporteur reminds the Government of the Republic of Egypt of its obligation to provide victims of torture with an enforceable right to repaations and rehabilitation, as specified in Article 14 of the Convention against Torture, and further calls on the Government to take steps to ensure that human rights defenders and associations are able to carry out their legitimate work in Egypt in a safe and enabling environment without fear of retaliation, intimidation or harassment of any sort.

JAL 29/07/2016 Case No. EGY 7/2016 State reply: None to date **Allegations concerning widespread arbitrary arrests and detentions, including incommunicado detentions; lack of access to legal counsel and violations of fair trial and due process of law guarantees; the imposition of death penalty following unfair trials; torture, ill-treatment, and the coerced extraction of confessions; lack of access to adequate health care during detention; the use of prolonged solitary confinement; and targeting of human rights defenders and civil society organisations (including travel bans and freezing of assets), since 2011.**

115. The Special Rapporteur regrets that the Government of the Republic of Egypt has not replied to the present communication, thereby failing to cooperate with the mandate issued by the Human Rights Council in its resolution 25/13.

116. In the absence of information to the contrary, the Special Rapporteur concludes that there is substance in the allegations presented in the initial communication, available via the link above, and is therefore of the view that the Government of the Egypt, by engaging in widespread arbitrary arrests and detentions, including incommunicado detentions; lack of access to legal counsel and violations of fair trial and due process of law guarantees; the imposition of death penalty following unfai trials; torture, ill-treatment, and the coerced extraction of confessions; lack of access to adequate health care during detention; the use of prolonged solitary confinement; and targeting of human rights defenders and civil society organisations (including travel bans and

freezing of assets) since 2011, has violated the rights of numerous victims to free from torture or cruel or degrading treatment as provided by Article 1, 2 and 16 of the Convention against Torture (CAT).

117.Continued serious concern is expressed about the alleged widespread arbitrary arrests and detentions, incommunicado detentions and prolonged solitary confinement, torture and ill-treatment of prisoners in custody, including children, (sometimes resulting in deaths) as well as coerced extraction of confessions, lack of access to appropriate health care, lack of access to legal counsel and violations of fair trial and due process of law guarantees, imposition of death penalty following unfair trials, and the continued targeting of human rights defenders and civil society organisations (including travel bans and freezing of assets).

118.The Special Rapporteur urges the State to take all necessary interim measures to ensure the full protection of its citizens against any violation of their human rights and, *inter alia*, to guarantee their rights to be free from torture or cruel, inhuman or degrading treatment or punishment; to guarantee fair trials; and to exclude statements and confessions made as a result of torture from any proceedings, in line with its international obligations, codified inter alia in the CAT and the International Covenant on Civil and Political Rights. Furthermore, the Special Rapporteur calls upon the Government of the Republic of Egypt to comply with its obligation, under international customary law, to investigate, prosecute and punish all acts of torture and other cruel, inhuman or degrading treatment or punishment, as codified, inter alia in the CAT, and to provide the victims with redress, in accordance with articles 12 and 14 of the CAT.

JAL 16/08/2016 Case No. EGY 9/2016 State Reply: None to date **Allegations concerning the torture and ill-treatment, detention in inhumane conditions, denial of medical care, and the repeated prosecution under charges of illegal demonstration and belonging to a forbidden group of Mr. [redacted], a juvenile, who was acquitted four times by a court for the same charges.**

119.The Special Rapporteur regrets that the Government of Egypt has not replied to the present communication, thereby failing to cooperate with the mandate issued by the Human Rights Council in its resolution 25/13.

120.In the absence of information to the contrary, the Special Rapporteur concludes that there is substance in the allegations presented in the initial communication, available via the link above, and is therefore of the view that the Government of Egypt, by repeatedly prosecuting Mr. [redacted] under charges of illegal demonstration and belonging to a forbidden group, despite the fact that he was acquitted four times by a court for the same charges, has violated his right to be free from torture or cruel or degrading treatment as provided by Article 1, 2 and 16 of the Convention against Torture (CAT).

121.The Special Rapporteur notes with great concern the allegations contained in previous communications on Mr. [redacted]'s case, which have been addressed by the Working Group on Arbitrary Detention (Opinion 53/2015, A/HRC/WGAD/2015/53), concerning the torture and ill-treatment of Mr. [redacted] for the purposes of extracting a confession, his detention together with adults in inhumane conditions, and the denial of access to medical care in detention.

122.The Special Rapporteur urges the Government of Egypt to protect the right of Mr. [redacted] to be free from torture or cruel, inhuman or degrading treatment, and to guarantee his fair trial, including by excluding any statement and confession made as a result of torture from any proceedings, in line with its international obligations, codified *inter alia* in the CAT and the International Covenant on Civil and Political Rights. The

State is further urged to conduct a fair and impartial investigation into the allegations, to prosecute and punish those responsible, and to provide adequate redress to Mr. [redacted].

JUA 09/08/2016 Case No. EGY 10/2016 State Reply: None to date Allegations concerning the arbitrary detention and mistreatment of human rights defender Mr. Ahmed Abdallah Abou Elela Abdallah.

123. The Special Rapporteur regrets that the Government of Egypt has not replied to the present communication, thereby failing to cooperate with the mandate issued by the Human Rights Council in its resolution 25/13.

124. In the absence of information to the contrary, the Special Rapporteur concludes that there is substance in the allegations presented in the initial communication, available via the link above, and is therefore of the view that the Government of Egypt, by arbitrarily detaining Mr. Abdallah, subjecting him to mistreatment, failing to bring him before any court for trial on the substance of the allegations against him, and subjecting him to inhumane conditions of detention in an overcrowded call in the New Cairo police station 1, has violated his right to be free from torture or cruel or degrading treatment as provided by Article 1, 2 and 16 of the Convention against Torture (CAT).

125. The Special Rapporteur would like to draw the Government's attention to Rules 11–23 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the "Mandela Rules") which mandate that appropriate accommodation, minimum cubic content of air and floor space, lighting and ventilation should be provided, with requirements to be met regarding the personal hygiene of prisoners. Failure to comply with the minimum conditions of detention amounts to cruel, inhuman and degrading treatment.

126. The Special Rapporteur urges the Government of Egypt to comply with its obligation, under CAT, to investigate, prosecute and punish all acts of torture and other cruel, inhuman or degrading treatment or punishment, and to provide the victim with reparations in accordance with articles 12 and 14 of the CAT.

El Salvador

JAL 14/04/2016 Case No SLV 1/2016: State Reply: 06/07/2016 **Alegaciones relativas a la salud sexual de las mujeres en El Salvador en el contexto de los riesgos del virus Zika.**

127. El Relator Especial agradece al Gobierno de El Salvador por su respuesta a la comunicación conjunta con otros procedimientos especiales, de fecha 14 de abril de 2016, la cual versaba sobre la situación de los derechos a la salud sexual y reproductiva de las mujeres en El Salvador, en particular en el contexto de los riesgos del virus Zika para la salud de las mujeres.

128. El Relator Especial aprecia el esfuerzo del Gobierno en responder detalladamente a las inquietudes, obligaciones y preguntas presentadas en la comunicación inicial. Además, acoge con beneplácito las medidas tomadas por el Ministro de la Salud respecto a la difusión de información en la sociedad de El Salvador respecto del dengue, Chikungunya y Zika, tanto a hombres como a mujeres, así como su apoyo a la despenalización del aborto en El Salvador.

129. Sin embargo, reitera que en los casos en que el aborto es el único medio disponible para evitar un peligro contra la vida o la salud de la mujer, su criminalización constituye

un impedimento real y considerable al acceso de la mujer a una digna salud sexual. El Relator Especial sobre la Tortura expresa gran preocupación sobre las consecuencias que conlleva la penalización absoluta de dicho servicio de salud sexual y reproductiva. En este contexto, hace referencia a su informe temático (A/HRC/22/53), en el que concluye que la práctica de negar servicios reproductivos de aborto incrementa de hecho el número de abortos inseguros, exponiendo a las mujeres a consecuencias graves y duraderas para su salud física y mental, incluyendo el riesgo de muerte y discapacidad. Asimismo, reitera las conclusiones del Comité contra la Tortura, que establecen que las restricciones en el acceso al aborto y prohibiciones absolutas del mismo transgreden la prohibición de la tortura y los malos tratos.

130.El Relator señala ausencia de información que demuestre un progreso legislativo en eliminar la prohibición absoluta del aborto en El Salvador, así como ausencia de información que demuestre avances en el acceso efectivo a información sexual y reproductiva entre la población, y en el acceso a métodos anticonceptivos. Los datos y la información proporcionados por el Estado son previos a los hechos mencionados en la comunicación en cuestión. Por ello, el Relator Especial concluye que hay fundamentos suficientes en los argumentos presentados, disponibles en el enlace señalado anteriormente, para señalar que el Gobierno de El Salvador ha violado el derecho de las mujeres y niñas a no ser sometidas a tratos crueles, inhumanos o degradantes, como afirma el artículo 16 del CAT.

JUA 14/07/2016 Case No. SLV 2/2016 State Reply: None to date **Alegaciones sobre María Teresa Rivera, una de las mujeres que cumplen penas de prisión por cuestiones relacionadas con el embarazo así como la penalización del aborto en El Salvador**

131.El Relator Especial lamenta que, hasta la fecha, el Gobierno de El Salvador no haya respondido a la presente comunicación, y por ello, considera que no ha cumplido con su deber de cooperar con el mandato establecido por el Consejo de Derechos Humanos en la resolución 25/13.

132.Asimismo, el Relator Especial considera que el Gobierno no ha cumplido con su obligación internacional de garantizar el acceso a la salud sexual y reproductiva, incluida la atención de la salud materna, el acceso a todos los métodos de anticoncepción moderna y acceso a servicios de aborto seguro y legal, al menos en los casos en los que el embarazo ponga en peligro la vida o la salud de la mujer o la niña; cuando sea resultado de violación o incesto, o en casos de malformación fetal grave.

133.Ante la falta de información que indique lo contrario el Relator concluye que el Gobierno de El Salvador, está en riesgo de violar la Convención en contra de la Tortura (CAT). Se exprcsa profunda preocupación que el Fiscal General haya decicído recurrir la sentencia judicial que había puesto en libertad a María Teresa Rivera y que esta última pueda correr el peligro de ser nuevamente encarcelada. Asimismo, nos sigue preocupando la situación de las otras mujeres que cumplen penas de hasta 40 años de prisión por homicidio agravado por cuestiones relacionadas con el embarazo. Además, se expresa preocupación por la propuesta de modificación al Código Penal, presentada el día 11 de julio por un diputado perteneciente al partido ARENA, que pretende elevar las penas por aborto que actualmente son de 2 a 8 años, hasta condenas de 30 a 50 años.

134.El Relator Especial quisiera recordarle al Estado su informe temático Numero A/HRC/22/53 donde exhorta a todos los Estados a que velen por que las mujeres tengan acceso a la atención médica de emergencia, incluidos los cuidados posteriores al aborto, sin temor a sanciones penales, represalias o trato humillante.

France

JUA Date: 31/05/2016 Case No. FRA 1/2016 State Reply: 30/06/2016 **Allégation concernant l'utilisation de l'isolement cellulaire prolongé et l'extradition imminente de M. Mukhtar Ablyazov vers la Russie ou l'Ukraine.**

135.Le Rapporteur spécial remercie le gouvernement de France pour sa réponse, datée du 30 juin 2016, à la présente communication. Le Rapporteur a pris connaissance de l'explication du gouvernement en réponse aux préoccupations, obligations légales et questions soulevées dans la communication initiale. Suite à la réponse du gouvernement, le Rapporteur spécial a pris note des informations données par le gouvernement selon laquelle M. Ablyazov a été maintenu sous régime d'isolement à sa demande. Le Rapporteur accueille tous les conditions de détention favorables fournies par le gouvernement dans le but de protéger ses droits comme demandé par les articles 1, 2 et 16 de la Convention contre la torture et autres peines ou traitements cruels, inhumaines et dégradants (CTT). Il prend note de l'information fournie par le gouvernent selon laquelle la justice française, suivant les procédures légales, s'est déclarée favorable à l'extradition de M. Ablyazov assortis de réserves à savoir que M. Ablyazov ne sois soumis à aucune peine de travail non consenti, même à titre de modalité d'exécution de la peine dite de la privation de liberté et ce quelle que soit l'appellation de la peine.

136.Cependant, le Rapporteur spécial regrette que le gouvernement de France n'ait pas répondu suffisamment à la préoccupation de l'extradition de M. Ablyazov. En l'absence d'information suffisante prouvant le contraire, le Rapporteur spécial conclut qu'il y a de la substance quant à l'allégation présentée dans la communication initiale ci-dessus, et donc, que le gouvernement, en extradant M. Mukhtar vers la Russie ou l'Ukraine où il risquerait non seulement d'être persécuté, torturé et/ou maltraité et d'être condamné après un procès inéquitable, mais également d'être extradé vers le Kazakhstan, en particulier du fait de la coopération établies entre ces pays dans le cadre de la Convention de Minsk, où il risquerait d'être, et aurait été persécuté, torturé et/ou maltraité et condamné après un procès inéquitable, a violé article 3 de la CTT en ce qui concerne le principe de non-refoulement.

137.Le Rapporteur spécial souhaiterait attirer l'attention du gouvernement sur l'article 3 de la CCT en vertu duquel aucun État où il y a des motifs sérieux de croire qu'elle risque d'être soumise à la torture. Le Rapporteur spécial souhaiterait aussi attirer l'attention du gouvernement au paragraphe 31 de son rapport soumis à l'Assemblée Générale (A/59/324), où le Rapporteur spécial souligne qu' « ...il y a deux ans, le Rapporteur spécial a eu connaissance de plusieurs cas dans lesquels tout porte à croire que les assurances diplomatiques n'ont pas été respectées et que les personnes transférées ont subi des traitements constituant une violation de l'interdiction absolue de la torture et de toutes autres formes de mauvais traitements (voir le document E/CN.4/2004/56/Add.1, par. 1827).» En plus, le Rapporteur spécial note qu'en égard de la principe de non-refoulement, les facteurs et circonstances à prendre en compte peuvent se rapporter à la vulnérabilité de la personne considérée face à la torture ou à d'autres formes de mauvais traitements, y compris l'histoire personnel de torture (paras. 34, 38).

138.Le Rapporteur spécial exhorte le gouvernement de ne pas exécuter l'avis d'extradition pris contre M. Mukhtar en vue de protéger ses droits comme l'a demandé le Comité contre la torture qui exige la protection des droits de M. Mukhtar de ne pas

être soumis à la torture ou autres peines ou traitements cruels, inhumains ou dégradants, conformément à la CCT.

Gambia

JUA 28/12/2015 Case No. GMB 3/2015 State Reply: None to date **Allegations of the arbitrary detention, torture, and degrading treatment of Mr. Alhagie Abdoulie Ceesay.**

139. The Special Rapporteur regrets that the Government of Gambia has not replied to the present communication, thereby failing to cooperate with the mandate issued by the Human Rights Council in its resolution 25/13.

140. In the absence of information to the contrary, the Special Rapporteur concludes that there is substance in the allegations presented in the initial communication, available in the link above, and is therefore of the view that the Government of Gambia, by subjecting Mr. Ceesay to torture and degrading treatment and depriving him of the access to a lawyer, doctor, and his family, has violated his right to be free from torture or cruel, inhuman or degrading treatment as provided by articles 1, 2, and 16 of the Convention against Torture (CAT).

141. Particularly in light of contradictory press reports indicating that Mr. Ceesay has escaped from prison or been murdered, the Special Rapporteur remains deeply concerned for his well-being and calls upon the Government of Gambia to inform him of Mr. Ceesay's whereabouts and condition. Furthermore, the Special Rapporteur strongly urges the Government of Gambia to comply with its obligation, under international customary law, to investigate, prosecute and punish all acts of torture and other cruel, inhuman or degrading treatment or punishment, and to protect the physical and psychological integrity of Mr. Ceesay in accordance with its obligations under the CAT and international customary law.

JAL 18/05/2016 Case No. GMB 1/2016 State Reply: None to date **Allegations concerning the torture resulting in death of Mr. Solo Sandeng, the excessive use of force by Police Intervention Unit officers against peaceful protesters, and the disappearances, rapes, torture, and ill-treatment of demonstrators taken into custody by National Intelligence agents.**

142. The Special Rapporteur regrets that the Government of Gambia has not replied to the present communication, thereby failing to cooperate with the mandate issued by the Human Rights Council in its resolution 25/13.

143. In the absence of information to the contrary, the Special Rapporteur concludes that there is substance in the allegations presented in the initial communication, available via the link above, and is therefore of the view that the Government of Gambia, by subjecting Mr. Sandeng to torture in police custody which resulted in his death, and by using indiscriminate and excessive force against protesters, including physical violence, tear gas, and gunshots by the Police Intervention Unit; and by subjecting demonstrators to disappearances, rapes, torture and ill-treatment during interrogation and detention by the National Intelligence agents, has violated the right of Mr. Sandeng and other demonstrators to be free from torture or cruel, inhuman or degrading treatment, as codified, inter alia, by articles 1, 2, and 16 of the Convention against Torture (CAT). Further, the Special Rapporteur expresses concern regarding the death threats received by Mr. Sandeng's family, which may amount to cruel, inhuman or degrading treatment or torture (A/HRC/RES/16/23).

144. The Special Rapporteur strongly condemns the torture of Mr. Sandeng resulting his death, and urges the Government of Gambia to conduct a prompt, impartial, and effective investigation of the alleged acts of torture, prosecuting and punishing the responsible for those acts, and providing adequate redress to the victims as codified inter alia in the CAT and customary international law. The Special Rapporteur further calls upon the Government to take appropriate measures to ensure the physical and psychological integrity of all the persons arrested and detained, as well as Mr. Sandengur surviving family members.

Greece

JUA 08/02/2016 Case No. GRC 1/2016 State Reply: 13/05/16 **Allegations concerning the use of severe forms of seclusion and restraint on disabled internees.**

145. The Special Rapporteur thanks the Government of Greece for its reply, dated 13 May 2016, to the present communication.

146. The Special Rapporteur acknowledges the account of the Government of Greece in response to the concerns, legal obligations, and questions raised in the initial communication. He cautiously welcomes the information provided by the Government according to which the abolishment of the use of restraints in the Disability Branch of the Centre of Social Welfare of Western Greece in Lechaina was planned to occur in June 2016, though he has not been able to confirm the implementation of this policy change. Notwithstanding this positive development, the Government's reply fails to inform the Special Rapporteur of any measure taken concerning the isolation of persons with physical and intellectual disabilities.

147. The Special Rapporteur welcomes the decision of the Government of Greece to abolish the use of restraints, thereby taking steps to achieve compliance with article 16 of the Convention against Torture (CAT). However, in the absence of information to the contrary, the Special Rapporteur concludes that there is substance in the allegations presented in the initial communication, available via the link above, and that the Government, by subjecting disabled persons and children to extended isolation, contravenes article 16 of the CAT.

148. The Special Rapporteur would like to draw the Government's attention to his predecessor's 2008 report to the General Assembly, which stated, that "the prolonged isolation of detainees may amount to cruel, inhuman or degrading treatment or punishment and, in certain instances, may amount to torture" (A/63/175, para. 77). In the same document, he reiterated that solitary confinement (i.e. physical isolation in a cell for 22 to 24 hours per day, and in some jurisdictions being allowed outside for up to one hour) can result in serious and adverse health effects (A/63/175, para. 82).

149. The Special Rapporteur strongly urges the Government of Greece to comply with its obligations to prevent torture and other cruel, inhuman and degrading treatment or punishment and protect the physical and psychological integrity of individuals under its care, in particular ceasing practices of seclusion and restraint that contravene these imperatives.

JUA 17/06/2016 Case No. GRC 2/2016 State Reply: 06/07/2016 **Allegations of the imminent refoulement of two Syrian nationals, and the related risk of their torture or cruel, inhuman or degrading treatment in Turkey.**

150.The Special Rapporteur thanks the Government of Greece for its reply, dated 6 July 2016, to the present communication.

151.The Special Rapporteur notes that the Government of Greece, in its reply, does not sufficiently address the concerns, legal obligations, and questions raised in the initial communication, available via the link above, with regards to the dismissal of the asylum applications of Mr. X and Mr. Y. Furthermore, the Government's reply fails to address the adequate identification of their protection needs during the screening process and their risk of return to Turkey, where they are at risk of attacks and other forms of persecution as members of a minority group.

152.The Special Rapporteur expresses grave concern over the risk of a return to Turkey, where they might face torture because of Mr. X and Mr. Y are members of a minority group. Such a return would constitute a violation of article 3 of the Convention against Torture (CAT). This absolute prohibition against refoulement is stronger than that found in refugee law, meaning that persons may not be returned even when they may not otherwise qualify for refugee or asylum status under article 33 of the 1951 Refugee Convention or domestic law. Accordingly, non-refoulement under the CAT must be assessed independently of refugee or asylum status determinations, so as to ensure that the fundamental right to be free from torture or other ill-treatment is respected even in cases where non-refoulement under refugee law may be circumscribed (A/70/303).

153.It has come to the attention of the Special Rapporteur that, as of the drafting of this report, the Government of Greece is in the process of sending the Syrian refugees back to Turkey. The Special Rapporteur strongly urges the Government of Greece to protect the right of these two refugees to be free from torture or cruel, inhuman or degrading treatment, as provided by articles 1, 2 and 16 of the CAT, and to refrain from deporting these individuals to Turkey where they risk torture, thereby ensuring compliance with article 3 of the CAT.

Guatemala

JOL 26/02/2016 Case No. GTM 2/2016 State Reply: 06/04/2016 y 24/05/2016 **Denuncias relativas a los procesos judiciales respecto de militares en retiro acusados por desaparición forzada y delitos de lesa humanidad.**

154.El Relator Especial agradece al Gobierno de Guatemala por su respuesta a la comunicacis por desaparición forzada y delitos de lesa humanidad. inhuman or degrading treatment, as provided by articles 1, 2 and 16 of the CAT, and to refrain from deporting thesro, acusados por desapariciones forzadas y delitos de lesa humanidad en cuatro casos (los casos de CREOMPAZ y Plan de Sánchez, entre otros).

155.En consecuencia, el Relator Especial acoge con benepl por su respuesta a la comunicacis por desaparición forzada ación del Estado al respecto del artículo 12 de la Convención contra la Tortura (CCT), que requiere que todo Estado Parte realice una investigación pronta e imparcial en caso de sospecha de tortura, y el artículo 7 de la Convención que requiere que todo Estado Parte enjuicie a los presuntos autores de actos de tortura. Asimismo, el Relator Especial aprecia la información recibida respecto de la emisión de sentencias condenatorias de 120 y 240 años de prisión para los dos acusados en el caso Sepur Zarco y el otorgamiento de reparaciones económicas en favor de los familiares de las víctimas y otras reparaciones de carácter simbólico.

156.Sin perjuicio de lo anterior, el Relator Especial lamenta la falta de informacide las víctimas y otras reparaciones de carácternces del proceso judicial seguido en el caso de

la desaparición forzada del niño Marco Antonio Molina Thiessen. Al respecto, el Relator Especial exhorta al Gobierno de Guatemala a garantizar la investigaciestigacireparaciones de carácternces del proceso juables, y recuerda al Gobierno que mientras no se establezcan las responsabilidades por los hechos, el Estado ha fallado en cumplir con sus obligaciones de conformidad con las normas de derecho internacional de investigar, procesar y condenar a los responsables de actos de tortura y otros malos tratos, como se encuentran establecidas en el artículo 7 de la Convención contra de la Tortura (CCT).

157.Finalmente, el Relator Especial recuerda al Estado la obligaciemala a garantizar la investigaciestigacireparaciones de carácternces deinhumanos o degradantes obtengan reparaci reparacial Estado la obligaciemala a garantizar

Indonesia

JUA 08/12/2015 Case No. IDN 10/2015 State Reply: None to date **Allegations concerning the arrest, detention, and extradition of Mr. Abdulrahman Khalifa Salem Binsobeih from Indonesia to the United Arab Emirates.**

158.The Special Rapporteur regrets that the Government of Indonesia has not replied to the present communication, thereby failing to cooperate with the mandate issued by the Human Rights Council in its resolution 25/13.

159.In the absence of information to the contrary, the Special Rapporteur concludes that there is substance in the allegations presented in the initial communication, available via the link above, and is therefore of the view that by participating in the return of Mr. Binosobeih to the United Arab Emirates, a place where he is at risk of torture and cruel, inhuman and degrading treatment, the Government of Indonesia has violated its obligation under the principle of non-refoulement as codified, inter alia, in articles 1, 2, 3 and 16 of the Convention against Torture (CAT).

160. The Special Rapporteur reminds the Government of its obligation to protect the right to physical and mental integrity of all persons, regardless of immigration status, under the Universal Declaration of Human Rights and the Convention against Torture. The Rapporteur further draws the Government's attention to article 3 of the CAT, which provides that no State party shall expel, return ("refouler"), or extradite a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture. In this context, as paragraph 9 of General Comment No. 20 on the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, the Human Rights Committee states that State parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of extradition, expulsion or refoulement. The Special Rapporteur also draws the attention of the Government to paragraph 16 of Resolution A/RES/65/206 of the General Assembly which urges States "not to expel, return ("refouler"), extradite or in another way transfer a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture, and recognizes that diplomatic assurances, where used, do not release states from their obligation under international human rights, humanitarian and refugee law, in particular the principle of non-refoulement." "The principle of non-refoulement is an inherent part of the overall absolute and imperative nature of the prohibition on torture and other cruel, inhuman and degrading treatment." (A/59/324, para. 28)

161.It has come to the attention of the Special Rapporteur that, as of the drafting of this observation, Mr. Binsobeih has reportedly been kidnapped from the police station at the Island of Batam in Indonesia by officials of the Embassy of the United Arab Emirates and the Indonesian Secret Service and made to appear before the Federal Supreme Court in the United Arab Emirates on 28 March 2016 for retrial on as yet unknown charges.

162.The Special Rapporteur strongly condemns the Government of Indonesia's participation in the return of Mr. Binsobeih to the United Arab Emirates. The Rapporteur strongly urges the Government of Indonesia to cease facilitating the return of persons to states where they are at risk of torture or other cruel, inhuman or degrading treatment or punishment and to comply with its obligations under the CAT

JAL 24/03/2016 Case No. IDN 1/2016 State Reply: None to date **Allegation of excessive use of force, torture, killing, arbitrary arrest and detention of individuals celebrating West Papuan National Day.**

163.The Special Rapporteur regrets that the Government of Indonesia has not replied to the present communication, thereby failing to cooperate with the mandate issued by the Human Rights Council in its resolution 25/13.

164.In the absence of information to the contrary, the Rapporteur concludes that there is substance in the allegations presented in the initial communication, available via the link above, and is therefore of the view that the Government of Indonesia, by torturing and killing Mr. Yonas Mantori, Mr. Herik Mantori, and Mr. Yulianus Robaha, and Mr Darius Andiribi; shooting and injuring Mr. Niko Suhn, Mr. Zet Tabuni, Mr. Paulinus Wororoai, Mr. Zakarias Torobi, Mr. Yance Manitori, Mr. Agus Manitori, Mr. Daud Ayomi, Mr. Pilemon Ayomi, Mr. Alius Karimati and Mr. Anton Runaweri; and the injury and detention of other individuals, has violated the right of the above mentioned persons to be free from torture or cruel, inhuman or degrading punishment as provided by articles 1, 2, 12 and 16 of the Convention against Torture (CAT).

165.The Special Rapporteur urges the Government of Indonesia to comply with its obligation, under international customary law, to investigate, prosecute and punish all acts of torture and other cruel, inhuman or degrading treatment or punishment, as codified, inter alia, in the CAT.

JAL 19/04/2016 Case No. IDN 2/2016 State Reply: None to date **Allegation of the enactment and enforcement of an anti-LGBT law, resulting in harassment, arbitrary detention, torture and ill-treatment of LGBT people by authorities in Aceh Province.**

166.The Special Rapporteur regrets that the Government of Indonesia has not replied to the present communication, thereby failing to cooperate with the mandate issued by the Human Rights Council in its resolution 25/13.

167.In the absence of information to the contrary, the Special Rapporteur concludes that there is substance in the allegations presented in the initial communication, available via the link above, that the Government of Indonesia, by enacting and enforcing the Qanun Jinayah law that criminalizes LGBT persons and subjects them to corporal punishment, such as caning, and has resulted in harassment and threats by the municipal Sharia police, has violated their right to be free from torture or cruel, inhuman or degrading treatment, as provided by article 1, 2 and 16 of the Convention against Torture (CAT). The Special Rapporteur also expresses grave concern about police reliance on the use of prophylactics by LGBT persons as evidence to apply the new law he use of pe that has resulted in LGBT persons being afraid to buy and carry prophylactics, thereby seriously

jeopardizing their right to health and their ability to protect themselves and others from HIV transmission, which constitutes a further violation of article 16 of the CAT.

168. The Special Rapporteur would like to remind the Government that States are urged to conduct a fair and impartial investigation into incidents in violence use of pe that has resulted in LGBT persons being afraid to buy and carry prophylactws that trap them in abusive circumstances."h(A/HRC/7/3, para. 10) Furthermore, "[a] clear link exists between the criminalization of LGBT persons and homophobic and transphobic hate crimes, police abuse, community and family violence and stigmatization."A(A/HRC/19/41, para. 15)

169. The Special Rapporteur strongly urges the Government of Indonesia to protect the right of the LGBT community to be free from torture or cruel, inhuman or degrading treatment, and to repeal this law which increases the risk of torture and ill-treatment of LGBT persons.

JUA 13/05/2016 Case No. IDN 5/2016 State Reply: None to date **Alleged imminent execution by firing squad of Mr. Agus Hadi, Mr. Pujo Lestari, Mr. Humphrey Jefferson Ejike Eleweke, and at least 8 other individuals based on convictions for drug trafficking.**

170. The Special Rapporteur regrets that the Government of Indonesia has not replied to the present communication, thereby failing to cooperate with the mandate issued by the Human Rights Council in its resolution 25/13.

171. In the absence of information to the contrary, the Special Rapporteur concludes that there is substance in the allegations presented in the initial communication, available via the link above, and is therefore of the view that the government of Indonesia, by applying the death penalty to Mr. Hadi, Mr. Lestari, and Mr. Ejike, who, may not have been convicted of "most serious crimes," and announcing their imminent execution, has failed to protect the physical and psychological integrity of these individuals and violated their right to be free from torture and cruel, inhuman or degrading punishment as provided for by articles 1, 2, and 16 of the Convention against Torture (CAT), and article 6(2) of International Covenant on Civil and Political Rights (ICCPR).

172. As observed by the Special Rapporteur in his 2012-report to the General Assembly, there is evidence of an evolving standard within international bodies and a robust State practice to frame the debate about the legality of the death penalty within the context of the fundamental concepts of human dignity and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. This evolving standard, along with the resulting illegality of the death penalty under such prohibition, is developing into a norm of customary, if it has not already done so (A/67/279, para. 74). Even if this is customary norm is still under way, the Special Rapporteur considers that most conditions under which capital punishment is actually applied, renders the punishment tantamount to torture and that under many other, less severe conditions, it still amounts to cruel, inhuman or degrading treatment (A/67/279, para. 75).

173. It has come to the attention of the Special Rapporteur that Mr. Ejike was executed on the 29 July 2016 by firing squad at Nusakambangan Prison Island. The Special Rapporteur stated in his thematic report on the death penalty that even though execution by firing squad is considered to be the fastest method of execution, such "executions conducted in public often expose convicts to undignified and shameful displays of contempt and hatred" (A/67/279, para. 40). He further noted that "even if the required safeguards are in place, all methods of execution currently used can inflict inordinate

pain and suffering. States cannot guarantee that there is a pain-free method of execution" (A/67/279, para.41).

174.The Special Rapporteur strongly urges the Government to refrain from executing Mr. Agus Hadi and Mr. Pujo Lestari and calls on the Government of Indonesia to take appropriate measures in order to ascertain that capital punishment will not be imposed for crimes that do not involve intent to kill and resultant death, and to examine the practice of executions with a view to abolishing it in the future if it cannot be applied without violating the absolute prohibition on torture or cruel, inhuman or degrading treatment or punishment.

JOL 21/06/2016 Case No. IDN 6/2016 State Reply: None to Date **Allegations concerning Presidential Decree (Perppu No. 1/2016) that modifies child protection laws by providing additional punishments for perpetrators of sexual violence against children, including chemical castration and the death penalty.**

175.The Special Rapporteur regrets that the Government of Indonesia has not replied to the present communication, thereby failing to cooperate with the mandate issued by the Human Rights Council in its resolution 25/13.

176.In the absence of information to the contrary, the Special Rapporteur concludes that there is substance in the allegations presented in the initial communication, and is therefore of the view that the Government of Indonesia, by providing for the additional punishments of chemical castration and the death penalty for perpetrators of sexual violence against children, has the potential to violate the rights of the accused to be free from torture or cruel, inhuman or degrading treatment, as provided by articles 1, 2 and 16 of the Convention against Torture.

177.As observed by the Special Rapporteur in his 2012-report to the General Assembly (A/67/279), there is evidence of an evolving standard within international bodies and a robust State practice to frame the debate about the legality of the death penalty within the context of the fundamental concepts of human dignity and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. This evolving standard, along with the resulting illegality of the death penalty under such prohibition, is developing into a norm of customary law, if it has not already done so (para. 74). Even if this customary norm is still under way, the Special Rapporteur considers that most conditions under which capital punishment is actually applied renders the punishment tantamount to torture and that under many other, less severe conditions, it still amounts to cruel, inhuman or degrading treatment (para. 75). Moreover, the Special Rapporteur emphasizes that "the expression 'most serious crimes' must be read restrictively to mean that the death penalty should be a quite exceptional measure" (CCPR General Comment 6, 1982) and that they are defined as "cases where it can be shown that there was an intention to kill, which resulted in loss of life" (A/HRC/4/20, paras. 39-53 and 65).

178.The Special Rapporteur calls upon all States to reconsider whether the use of the death penalty per se respects the inherent dignity of the human person, causes severe mental and physical pain or suffering and constitutes a violation of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment (para. 79 A/67/279). Furthermore, as stated in his 2012 report (A/67/279), the Special Rapporteur calls upon the Government of Indonesia to observe rigorously the restrictions and conditions imposed by article 7 of the International Covenant on Civil and Political Rights and article 1 or article 16 of the Convention against Torture.

JUA 27/07/2016 Case No. IDN 7/2016 State reply: None to date **Allegations concerning the risk of imminent execution of 15 prisoners, including foreign nationals, for drug-related charges, following denial of due process and torture and ill-treatment in some cases.**

179. The Special Rapporteur regrets that the Government of Indonesia has not replied to the present communication, thereby failing to cooperate with the mandate issued by the Human Rights Council in its resolution 25/13.

180. In the absence of information to the contrary, the Special Rapporteur concludes that there is substance in the allegations presented in the initial communication, available via link above, and is therefore of the view that the Government of Indonesia, by applying the death penalty to individuals who have not been convicted of "most serious crimes" and announcing the imminent execution of the death row inmates, has violated the fundamental concepts of human dignity and the prohibition of torture and cruel, inhuman or degrading treatment or punishment, as provided by Article 6(2) and 7 of the International Covenant on Civil and Political Rights (ICCPR) and articles 1, 2, and 16 of Convention against Torture (CAT).

181. As observed by the Special Rapporteur in his 2012-report to the General Assembly (A/67/279), there is evidence of an evolving standard within international bodies and a robust State practice to frame the debate about the legality of the death penalty within the context of the fundamental concepts of human dignity and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. This evolving standard, along with the resulting illegality of the death penalty under such prohibition, is developing into a norm of customary law, if it has not already done so (para. 74). Even if this customary norm is still under way, the Special Rapporteur considers that most conditions under which capital punishment is actually applied renders the punishment tantamount to torture and that under many other, less severe conditions, it still amounts to cruel, inhuman or degrading treatment (para. 75). Moreover, the Rapporteur emphasizes that "the expression 'most serious crimes' must be read restrictively to mean that the death penalty should be a quite exceptional measure" (CCPR General Comment 6, 1982) and that they are defined as "cases where it can be shown that there was an intention to kill, which resulted in loss of life" (A/HRC/4/20, paras. 39-53 and 65).

182. The Special Rapporteur calls upon all States to reconsider whether the use of the death penalty per se respects the inherent dignity of the human person, causes severe mental and physical pain or suffering and constitutes a violation of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment (para. 79 A/67/279). Furthermore, as stated in his 2012 report (A/67/279), the Special Rapporteur calls upon the Government of Indonesia to observe rigorously the restrictions and conditions imposed by ICCPR and CAT. Additionally, the Rapporteur strongly urges the Government to refrain from carrying out death sentences and abolish the practice of executions altogether.

183. The Special Rapporteur further urges Indonesia to comply with its obligation, under international customary law, to investigate, prosecute and punish all acts of torture and other cruel, inhuman or degrading treatment or punishment, as codified, *inter alia*, in the CAT.

Iran

JUA 16/01/2015 Case No. IRN 1/2015 State Reply: 16/03/2016 **Allegations concerning the detention, torture, mistreatment, sexual abuse, and solitary confinement of Ms. Atena Farghdani in prison.**

184. The Special Rapporteur thanks the Government of the Islamic Republic of Iran for its reply, dated 16 March 2016, to the present communication, available via the link above.

185. The Special Rapporteur takes note of the information provided by the Government that Ms. Farghdani, a graphic artist, was sentenced to prison on charges of assembly and collusion with the aim of acting against national security, propaganda activities against the State, and insulting various State officials, and that this sentence constitutes a preliminary ruling that can be appealed and heard at the Tehran Appellate Court. In spite of the information supplied, the Special Rapporteur finds that the Government, in its reply, does not sufficiently address the concerns, legal obligations, and questions raised concerning the torture and ill-treatment of Ms. Farghdani while in custody, including allegations of solitary confinement, a harsh bodily search and mistreatment by prison officials, physical beatings that occurred inside the courtroom in the presence of authorities, and sexual assault in prison, thereby prompting him to conclude that the Government has failed to fully and expeditiously cooperate with the mandate issued by the Human Rights Council in resolution 25/13.

186. In the absence of information to the contrary, the Special Rapporteur concludes that there is substance in the allegations presented in the initial communication, and is therefore of the view that the Government of the Islamic Republic of Iran, by failing to protect the physical and psychological integrity of Ms. Farghdani and by subjecting her to prolonged solitary confinement, beatings, and sexual assault, has violated her right be free from torture or cruel, inhuman or degrading treatment as provided by article 7 of International Covenant on Civil and Political Rights (ICCPR).

187. The Special Rapporteur highlights the Basic Principles for the Treatment of Prisoners which stresses that "all prisoners shall be treated with the respect due to their inherent dignity and value as human beings" (General Assembly resolution 45/111). The Special Rapporteur further stresses that "solitary confinement is a harsh measure that may cause serious psychological and physiological adverse effects..."; consequently, "...solitary confinement has been found to be contrary to one of the essential aims of the penitentiary system, which is to rehabilitate offenders and facilitate their reintegration into society" (A/66/268, para. 79).

188. Further, in the Special Rapporteur's interim report to the General Assembly of 5 August 2011 (A/66/268), he defined solitary confinement, in accordance with the Istanbul Statement on the Use and Effects of Solitary Confinement, as the physical and social isolation of individuals who are confined in their cells for 22 to 24 hours a day. He observed that while solitary confinement for short periods of time may be justified under certain circumstances when adequate and effective safeguards in place, the use of prolonged (in excess of 15 days) or indefinite solitary confinement causes severe mental and physical pain or suffering. The Special Rapporteur further recalls paragraph 28 of the General Assembly resolution 68/156, stating that prolonged or indefinite solitary confinement runs afoul of the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment. Furthermore, due to the prisoner's lack of communication, as well as the lack of witnesses inside the prison, solitary confinement may also give rise to other acts of torture or ill-treatment.

189. The Special Rapporteur urges the Government of the Islamic Republic of Iran to comply with its obligations under international customary law to investigate, prosecute, and punish all acts of torture and cruel, inhuman, or degrading treatment or punishment as codified, inter alia, in the ICCPR and customary international law.

JUA 12/02/2015 Case No. IRN 3/2015 State Reply: 16/06/2015 and 04/03/2016
Allegations concerning the risk of imminent execution of Mr. Saman Naseem, a juvenile offender.

190. The Special Rapporteur thanks the Government of the Islamic Republic of Iran for its replies, dated 16 June 2015 and 4 March 2016, to the present communication, available via the link above.

191. The Special Rapporteur takes note of the information provided by the Government as regards the stages of Mr. Naseem's judicial and post-conviction proceedings; the information that Mr. Naseem was convicted pursuant to evidence other than his confession; and the claims that despite Mr. Naseem's being below the age of 18 at the time of committing the crime, his "physical and mental growth has been established."

192. In this context, and in light of the Government's admission that it has imposed the death penalty upon a juvenile offender, the Special Rapporteur concludes that there is substance in the allegations presented in the initial communication, available via the link above, and that the Government has violated Mr. Naseem's right be free from torture or cruel, inhuman or degrading treatment as provided by article 7 of International Covenant on Civil and Political Rights (ICCPR).

193. As observed by the Special Rapporteur in his 2012 report to the General Assembly (A/67/279), there is evidence of an evolving standard within international bodies and a robust State practice to frame the debate about the legality of the death penalty within the context of the fundamental concepts of human dignity and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. This evolving standard, along with the resulting illegality of the death penalty under such prohibition, is developing into a norm of customary law, if it has not already done so (para. 74). Even if this customary norm is still under way, the Special Rapporteur considers that most conditions under which capital punishment is actually applied renders the punishment tantamount to torture and that under many other, less severe conditions, it still amounts to cruel, inhuman or degrading treatment (para.75). The Special Rapporteur emphasizes that the execution of persons who committed their crimes while they were under 18 years of age is per se a violation of an existing norm of customary international law (para. 64). Furthermore, any judgments imposing the death sentence and executions of juvenile offenders amount to cruel, inhuman and degrading punishment, which is prohibited inter alia in the CAT, and violate the Government's obligation under article 37(a) of the Convention on the Rights of the Child (CRC) to refrain from imposing the death penalty for offences committed by persons below 18 years of age.

194. The Special Rapporteur calls upon all States to reconsider whether the use of the death penalty per se respects the inherent dignity of the human person, causes severe mental and physical pain or suffering and constitutes a violation of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment; (para. 79 A/67/279). He reminds the Government of the Islamic Republic of Iran that customary international law establishes the absolute and non-derogable prohibition of torture and other ill-treatment, as well as the prohibition of using evidence obtained under torture or ill-treatment.

195. The Special Rapporteur strongly urges the Government to refrain from carrying out death sentences, particularly against minors, and to abolish the practice of executions.

JUA 04/06/2015 Case No. IRN 6/2015 State Reply: 04/03/2016 and 16/03/2016 **Allegations concerning the detention and mistreatment of Ms. Atena Farghadani and Mr. Jason Rezaian, and Ms. Yeganeh Salehi in detention, and the denial of due process.**

196. The Special Rapporteur thanks the Government of the Islamic Republic of Iran for its replies, dated 16 March 2016 and 4 March 2016 to the present communication, available via the link above.

197. The Special Rapporteur takes note of the information provided by the Government that Mr. Rezaian was arrested on charges of espionage and released from detention on 16 January 2016; and that Ms. Farghdani, a graphic artist, was sentenced to prison on charges of assembly and collusion with the aim of acting against national security, propaganda activities against the State, and insulting various State officials, and that this constitutes a preliminary ruling that can be appealed and heard at the Tehran Appellate Court. The Special Rapporteur regrets that no information has been provided concerning the case of Ms. Yeganeh Salehi, a journalist for a newspaper of the United Arab Emirates, who was arrested together with Mr. Rezaian and subsequently released on bail. In spite of the information supplied, the Special Rapporteur finds that the Government, in its reply, does not sufficiently address the concerns, legal obligations, and questions raised concerning the mistreatment of Ms. Farghdani, who was subjected to beatings and solitary confinement; and Mr. Rezaian, who was subjected to solitary confinement and extensive interrogation while in custody, thereby prompting him to conclude that the Government has failed to fully and expeditiously cooperate with the mandate issued by the Human Rights Council in resolution 25/13.

198. In the absence of information to the contrary, the Special Rapporteur concludes that there is substance in the allegations presented in the initial communication, and is therefore of the view that the Government of Iran, by failing to protect the physical and psychological integrity of Ms. Farghdani and Mr. Rezaian, including by subjecting them to beating and solitary confinement, has violated their right be free from torture or cruel, inhuman or degrading treatment as provided by article 7 of International Covenant on Civil and Political Rights (ICCPR).

199. The Special Rapporteur highlights the Basic Principles for the Treatment of Prisoners, which stresses that "all prisoners shall be treated with the respect due to their inherent dignity and value as human beings" (General Assembly resolution 45/111). The Special Rapporteur further stresses that "solitary confinement is a harsh measure which may cause serious psychological and physiological adverse effects" and for that reason solitary confinement has been found to be "contrary to one of the essential aims of the penitentiary system, which is to rehabilitate offenders and facilitate their reintegration into society" (A/66/268, para. 79).

200. Further, in the Special Rapporteur's interim report to the General Assembly of 5 August 2011 (A/66/268), he defined solitary confinement, in accordance with the Istanbul Statement on the Use and Effects of Solitary Confinement, as the physical and social isolation of individuals who are confined in their cells for 22 to 24 hours a day. He observed that while solitary confinement for short periods of time may be justified under certain circumstances when adequate and effective safeguards are in place, the use of prolonged (in excess of 15 days) or indefinite solitary confinement causes severe mental and physical pain or suffering. The Special Rapporteur further recalls paragraph

28 of the General Assembly resolution 68/156, stating that prolonged or indefinite solitary confinement runs afoul of the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment. Additionally, due to the prisoner's lack of communication, as well as the lack of witnesses inside the prison, solitary confinement may also give rise to other acts of torture or ill-treatment.

201. The Special Rapporteur urges the Government of the Islamic Republic of Iran to comply with its obligations under international customary law to investigate, prosecute, and punish all acts of torture and cruel, inhuman, or degrading treatment or punishment as codified, inter alia, in the Convention against Torture (CAT) and the ICCPR.

JUA 02/06/2015 Case No. IRN 7/2015 State Reply: 04/03/2016 **Allegations concerning the situation of two juvenile offenders who are at risk of imminent execution.**

202. The Special Rapporteur thanks the Government of the Islamic Republic of Iran for its reply, dated 4 March 2016, to the present communication, available via the link above.

203. The Special Rapporteur takes note of the information provided by the Government that Mr. Naseem was being held in Zanjan Prison, that his request for a new hearing was accepted by Branch 37 of the Supreme Court on 22 August 2015, and that the case was under examination by a parallel branch in provincial criminal court. In spite of the information provided, the Special Rapporteur finds that the Government, in its reply, does not sufficiently address the concerns, legal obligations, and questions raised in the initial communication, having failed to provide information concerning the alleged incommunicado detention of Mr. Naseem, and further having failed to provide any information about the case of Mr. Hamid Ahmadi, thereby prompting him to conclude that the Government has failed to fully and expeditiously cooperate with the mandate issued by the Human Rights Council in resolution 25/13.

204. In this context, and in light of the Government's imposition of the death penalty upon juvenile offenders, the Special Rapporteur concludes that there is substance in the allegations presented in the initial communication, available via the link above, and that the Government has violated Mr. Naseem's and Mr. Ahmadi's rights be free from torture or cruel, inhuman or degrading treatment as provided by article 7 of International Covenant on Civil and Political Rights (ICCPR).

205. As observed by the Special Rapporteur in his 2012 report to the General Assembly (A/67/279), there is evidence of an evolving standard within international bodies and a robust State practice to frame the debate about the legality of the death penalty within the context of the fundamental concepts of human dignity and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. This evolving standard, along with the resulting illegality of the death penalty under such prohibition, is developing into a norm of customary law, if it has not already done so (para. 74). Even if this customary norm is still under way, the Special Rapporteur considers that most conditions under which capital punishment is actually applied render the punishment tantamount to torture and that under many other, less severe conditions, it still amounts to cruel, inhuman or degrading treatment (para.75). The Special Rapporteur emphasizes that the execution of persons who committed their crimes while they were under 18 years of age is per se a violation of an existing norm of customary international law (para. 64). Furthermore, any judgments imposing the death sentence and executions of juvenile offenders amount to cruel, inhuman and degrading punishment, which is prohibited inter alia in the CAT, and violate the Government's obligation under article

37(a) of the Convention on the Rights of the Child (CRC) to refrain from imposing the death penalty for offences committed by persons below 18 years of age.

206. The Special Rapporteur calls upon all States to reconsider whether the use of the death penalty per se respects the inherent dignity of the human person, causes severe mental and physical pain or suffering and constitutes a violation of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment (para. 79 A/67/279). He reminds the Government of the Islamic Republic of Iran that customary international law establishes the absolute and non-derogable prohibition of torture and other ill-treatment, as well as the prohibition of using evidence obtained under torture or ill-treatment.

207. The Special Rapporteur strongly urges the Government to refrain from carrying out death sentences, particularly against minors, and to abolish the practice of executions.

JUA 24/06/2015 Case No. IRN 9/2015 State Reply: 16/03/2016 **Allegations concerning the imprisonment, sentencing, imposition of solitary confinement, and denial of specialized medical care in detention of Ms. Atena Daemi, a civil rights activist, and Mr. Seraj Mirdamadi, a journalist, in the aftermath of unfair trials.**

208. The Special Rapporteur thanks the Government of the Islamic Republic of Iran for its reply, dated 16 March 2016, to the present communication, available via the link above.

209. The Special Rapporteur takes note of the information provided by the Government regarding the verdicts returned against Ms. Daemi and Mr. Mirdamadi, which are not final, and of the information that Ms. Daemi has been provided with medical care whilst in detention. In spite of the information supplied, the Special Rapporteur finds that the Government, in its reply, does not sufficiently address the concerns, legal obligations, and questions raised in the initial communication, regarding the solitary confinement and degrading conditions of confinement imposed upon Ms. Daemi, and the solitary confinement of and denial of adequate medical treatment of Mr. Mirdamadi, thereby prompting him to conclude that the Government has failed to cooperate fully and expeditiously with the mandate issued by the Human Rights Council in resolution 25/13.

210. In the absence of information to the contrary, the Special Rapporteur concludes that there is substance in the allegations presented in the initial communication, and is therefore of the view that the Government of the Islamic Republic of Iran, by failing to protect the physical and psychological integrity of Ms. Daemi and Mr. Mirdamadi, has violated their right be free from torture or cruel, inhuman or degrading treatment as provided by article 7 of International Covenant on Civil and Political Rights (ICCPR).

211. The Special Rapporteur highlights the Basic Principles for the Treatment of Prisoners which stresses that "all prisoners shall be treated with the respect due to their inherent dignity and value as human beings" (General Assembly resolution 45/111). With respect to the conditions of imprisonment, the Special Rapporteur directs the Government to the Nelson Mandela Rules (the United Nations Standard Minimum Rules for the Treatment of Prisoners), which establish minimum standards of healthy accommodation (Rule 13) and adequate and prompt provision of health care (Rules 24 and 27).

212. Concerning the allegations of denial of medical treatment, the Special Rapporteur highlights that the U.N. Standard Minimum Rules for the Treatment of Prisoners ("Mandela Rules") establish that "[p]risoners who require specialized treatment or surgery shall be transferred to specialized institutions or to civil hospitals" (Rule 27(1)).

213.Further, in the Special Rapporteur's interim report to the General Assembly of 5 August 2011 (A/66/268), he defined solitary confinement, in accordance with the Istanbul Statement on the Use and Effects of Solitary Confinement, as the physical and social isolation of individuals who are confined in their cells for 22 to 24 hours a day. He observed that while solitary confinement for short periods of time may be justified under certain circumstances when adequate and effective safeguards in place, the use of prolonged (in excess of 15 days) or indefinite solitary confinement causes severe mental and physical pain or suffering. The Special Rapporteur further recalls paragraph 28 of the General Assembly resolution 68/156, stating that prolonged or indefinite solitary confinement runs afoul of the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment. Furthermore, due to the prisoner's lack of communication, as well as the lack of witnesses inside the prison, solitary confinement may also give rise to other acts of torture or ill-treatment.

214.The Special Rapporteur urges the Government of the Islamic Republic of Iran to comply with its obligations under international customary law to investigate, prosecute, and punish all acts of torture and cruel, inhuman, or degrading treatment or punishment as codified, inter alia, in the Convention against Torture (CAT) and the ICCPR.

JAL 29/10/2015 Case No. IRN 16/2015 State Reply: 26/04/2016 **Allegations concerning the execution of Mr. Behrouz Alkhani, a Kurdish man, which occurred while the outcome of a Supreme Court appeal was pending.**

215.The Special Rapporteur thanks the Government of the Islamic Republic of Iran for its reply, dated 26 April 2016, to the present communication, available via the link above.

216.The Special Rapporteur takes note of the information provided by the Government that Mr. Alkhani's sentence was referred to and confirmed by the Supreme Court based on the evidence, after which time the sentence was executed on 25 August 2015.

217.In spite of the information supplied by the Government, its reply fails to respond to allegations that Mr. Alkhani was executed while awaiting the outcome of a separate Supreme Court appeal, following the overturning of the original Supreme Court sentence, and his subsequent re-sentencing by Branch 10 of the Appeal Court of the Oroumieh province; that Mr. Alkhani was denied a fair trial and due process guarantees; and that authorities have refused to return his body to his family for burial. The Special Rapporteur hence finds that the Government, in its reply, does not sufficiently address the concerns, legal obligations, and questions raised in the initial communication, which prompts him to conclude that the Government fails to fully and expeditiously cooperate with the mandate issued by the Human Rights Council in its resolution 25/13.

218.As observed by the Special Rapporteur in his 2012 report to the General Assembly (A/67/279), there is evidence of an evolving standard within international bodies and a robust State practice to frame the debate about the legality of the death penalty within the context of the fundamental concepts of human dignity and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. This evolving standard, along with the resulting illegality of the death penalty if imposed or executed under circumstances that violate such prohibition, is developing into a norm of customary law, if it has not already done so (para. 74). The Special Rapporteur calls upon all States to reconsider whether the use of the death penalty per se respects the inherent dignity of the human person, causes severe mental and physical pain or suffering and constitutes a violation of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment (para. 79). Even if this customary norm is still under way, the Special

Rapporteur considers that most conditions under which capital punishment is actually applied renders the punishment tantamount to torture and that under many other, less severe conditions, it still amounts to cruel, inhuman or degrading treatment (para. 75).

219 In the absence of information to the contrary, the Special Rapporteur concludes that there is substance in the allegations presented in the initial communication, available via the link above, and is therefore of the view that the Government of the Islamic Republic of Iran has executed a person convicted in an unfair trail and while his legal remedies were still pending and has refused to deliver his remains to his next of kin. In so doing, the Islamic Republic of Iran violated Alkhani's right to life and his and his family/s right to be free from torture or cruel, inhuman or degrading treatment, as provided by art. 1, 2, and 16 of the CAT, articles 6(2) and 6(4) of the ICCPR.

UA 29/10/2015 Case No. IRN 30/2015 State Reply: 07/03/2016 and 18/03/2016
Allegations the concerning the alleged arbitrary detention and continued harassment of three artists: Fatemeh Ekhtesari, Medhi Moosavi, and Atena Farghdani and the poor treatment of detained human rights activist, Narges Mohammadi.

220 The Special Rapporteur thanks the Government of the Islamic Republic of Iran for its replies, dated 07/03/16 and 18/03/16, to the present communication.

221 The Rapporteur takes note of the information provided by the Government that Mr. Moosavi's verdict is preliminary, Ms. Ekhtesari's case is still pending, and of the information concerning Ms. Mohammadi's health.

222 The Special Rapporteur however finds that the Government, in its reply, does not sufficiently address the concerns, legal obligations, and questions raised in the initial communication, which prompts him to infer that the Government fails to fully and expeditiously cooperate with the mandate issued by the Human Rights Council in its resolution 25/13, as well as to comply with its obligation, under international customary law, to investigate, prosecute and punish all acts of torture and other cruel, inhuman or degrading treatment or punishment as codified, *inter alia*, in the International Covenant on Civil and Political Rights (ICCPR)

223 In the absence of sufficient information to the contrary, the Special Rapporteur concludes that there is substance in the allegations presented in the initial communication, reiterated above, and thus, that the Government of the Islamic Republic of Iran has violated the absolute and non-derogable prohibition of torture and cruel, inhumane or degrading treatment or punishment, as codified in the ICCPR and customary international law.

UA 11/11/2015 Case No. IRN 41/2015 State Replies: 18/04/2016 and 04/05/2016
Allegations of torture, denial of due process and fair trial, and imminent execution of Messrs. Mohammad Ali Zeki and Milad Azimi who were children at the time of the alleged offenses of which they were convicted, as well as the alleged torture, denial of due process and fair trial, and impending execution of Mr. Sharam Ahmadi.

224 The Special Rapporteur thanks the Government of the Islamic Republic of Iran for its replies, dated 18/04/16 and 04/05/2016, to the present communication.

225 The Rapporteur takes note of the information provided by the Government that Mr. Azimi's sentence is suspended due to a request of retrial and that the implementation of Mr. Ahmadi's sentence is suspended.

226.The Special Rapporteur however finds that the Government, in its replies, does not sufficiently address the concerns, legal obligations, and questions raised in the initial communication, which prompts him to conclude that the Government fails fully and expeditiously to cooperate with the mandate issued by the Human Rights Council in its resolution 25/13, as well as to comply with its obligation, under international customary law, to investigate, prosecute and punish all acts of torture and other cruel, inhuman or degrading treatment or punishment, as codified, *inter alia*, in the International Covenant on Civil and Political Rights.

227.As observed by the Special Rapporteur in his 2012 report to the General Assembly (A/67/279), there is evidence of an evolving standard within international bodies and a robust State practice to frame the debate about the legality of the death penalty within the context of the fundamental concepts of human dignity and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. This evolving standard, along with the resulting illegality of the death penalty under such prohibition, is developing into a norm of customary law, if it has not already done so (para. 74). The Special Rapporteur further recalls that the execution of persons who are juveniles is per se a violation of an existing norm of customary international law (para. 64). The Special Rapporteur calls upon all States to reconsider whether the use of the death penalty per se respects the inherent dignity of the human person, causes severe mental and physical pain or suffering and constitutes a violation of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment (para. 79).

228.In the absence of sufficient information to the contrary, the Special Rapporteur concludes that there is substance in the allegations presented in the initial communication, reiterated above, and thus, that the Government of Iran by failing to protect the physical and psychological integrity of Mr. Ali Zehi, Mr. Azimi and Mr. Ahmadi, exclude evidence obtained under torture or ill-treatment, and take steps to prevent the execution of the latter three, has acted in discordance with article 15 of the CAT, and violated their right to be free from torture and other cruel, inhuman or degrading treatment or punishment as provided by articles 1 and 16 or the CAT, rights which are reflected in customary international law. The Special Rapporteur urges the Government of the Islamic Republic of Iran to refrain from executing these three persons.

JUA 03/12/2015 Case No. IRN 23/2015 State Reply: None to date **Allegations concerning the torture, ill-treatment, prolonged solitary confinement, and use of confessions extracted under torture of eight trade unionists and human rights defenders.**

229.The Special Rapporteur regrets that the Government of the Islamic Republic of Iran has not replied to the present communication, thereby failing to cooperate with the mandate issued by the Human Rights Council in its resolution 25/13.

230.In the absence of information to the contrary, the Special Rapporteur concludes that there is substance in the allegations presented in the initial communication, available via the link above, and is therefore of the view that the Government, by subjecting several individuals to prolonged solitary confinement and ill-treatment in detention, and by obtaining and using a coerced confession in judicial proceedings, has violated article 7 of the International Covenant on Civil and Political Rights (ICCPR) and customary international law prohibiting torture.

231.In the Special Rapporteur's interim report to the General Assembly of 5 August 2011 (A/66/268), he defined solitary confinement, in accordance with the Istanbul Statement on the Use and Effects of Solitary Confinement, as the physical and social

isolation of individuals who are confined in their cells for 22 to 24 hours a day. He observed that while solitary confinement for short periods of time may be justified under certain circumstances, with adequate and effective safeguards in place, the use of prolonged (in excess of 15 days) or indefinite solitary confinement may never constitute a legitimate instrument of the State, as it may cause severe mental and physical pain or suffering, a point that has been reiterated in paragraph 28 of the General Assembly Resolution 68/156. Prolonged or indefinite solitary confinement runs afoul of the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment. Due to the prisoner's lack of communication, as well as the lack of witnesses inside the prison, solitary confinement may also give rise to other acts of torture or ill-treatment. Furthermore, concerning the medical treatment provided by the complainants, the Special Rapporteur highlights that the U.N. Standard Minimum Rules for the Treatment of Prisoners ("Mandela Rules") establish that "Prisoners who require specialized treatment or surgery shall be transferred to specialized institutions or to civil hospitals" (Rule 27(1)).

232.The Special Rapporteur notes with approval the commutation of one of the complainant's sentences from death to a lesser sentence. Nonetheless, the Special Rapporteur strongly urges the Government to fully comply with its obligations under the ICCPR, and customary international law, to investigate, prosecute and punish all acts of torture and other cruel, inhuman or degrading treatment or punishment, as codified, inter alia, in the Convention against Torture (CAT). The Rapporteur further calls upon the State to comply with the standards set out in the Mandela Rules as concerns the medical treatment provided the prisoners.

JUA 20/01/2016 Case No. IRN 1/2016 State Reply: 07/07/16 **Allegations concerning the sentence of execution by stoning or hanging of Mrs. Fariba Khalegi for the crime of adultery.**

233.The Special Rapporteur thanks the Government of Iran for its reply, dated 7 July 2016, to the present communication. The Special Rapporteur acknowledges the account of the Government of Iran in response to the concerns, legal obligations, and questions raised in the initial communication. He welcomes the information provided by the Government, according to which the possibility exists for further review of Mrs. Khalegi's case by the head of the Judiciary with the possibility of retrial and resentencing. However, in spite of the information supplied by the Government, its reply fails to inform the Special Rapporteur about the use of death penalty for offences that do not meet the threshold of the "most serious crimes" and the use of corporal punishment, such as stoning, as a method of execution.

234.In the absence of information to the contrary, the Special Rapporteur concludes that there is substance in the allegations presented in the initial communication, available via the link above, and that the Government, by using the death penalty for a crime such as adultery, and by leaving the possibility open for an execution by stoning, has failed to protect Mrs. Khalegi's physical and mental integrity, and to protect her right to be free from torture or cruel, inhuman or degrading treatment or punishment, as provided by article 7 of the International Covenant on Civil and Political Rights and her right to life under article 6(2) of the same, as well as the customary international law prohibiting torture and cruel, inhuman, or degrading punishment.

235.For purposes of the imposition of capital punishment in retentionist States, the Special Rapporteur recalls that the notion of "most serious crimes" means offenses committed with intent to kill and that actually result in death. (A/HRC/4, para. 53 and CCPR General Comment 6) He highlights the report to the General Assembly in August

2005, which concludes that any form of corporal punishment is contrary to the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. (A/60/316, para. 28) "States cannot invoke provisions of domestic law to justify the violation of their human rights obligations under international law, including the prohibition of corporal punishment." (A/60/316, para. 28) Furthermore, in the 67th session of the General Assembly, the Special Rapporteur stated that "the jurisprudence of regional human rights bodies and national judiciaries leaves no doubt that death by stoning constitutes torture and is, beyond dispute, a violation of the prohibition of cruel, inhuman and degrading treatment." (A/67/279, para. 31)

236. As observed by the Special Rapporteur in his 2012 report to the General Assembly, there is evidence of an evolving standard within international bodies and a robust State practice to frame the debate about the legality of the death penalty within the context of the fundamental concepts of human dignity and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. (A/67/279) This evolving standard, along with the resulting illegality of the death penalty under such prohibition, is developing into a norm of customary law, if it has not already done so (para. 74). The Special Rapporteur calls upon all States to reconsider whether the use of the death penalty per se respects the inherent dignity of the human person, causes severe mental and physical pain or suffering and constitutes a violation of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. (A/66/268, para. 79)

237. The Special Rapporteur strongly urges the Government of Iran to refrain from executing Mrs. Khalegi, as well as to refrain from, and abolish the practice of corporal punishment, and executions, particularly for crimes that do not constitute "most serious crimes."

JUA 18/02/2016 Case No. IRN 4/2016 State Reply: 17/05/2016 **Allegations concerning the ill-treatment and torture of musician and founder of Barg Music, Mr. Mehdi Rajabian, musician, Mr. Yousef Emadi, and filmmaker, Mr. Hossein Rajabian.**

238. The Special Rapporteur thanks the Government of the Islamic Republic of Iran for its reply, dated 18 May 2016, to the present communication, available via the link above.

239. The Rapporteur takes note of the information provided by the Government that Mr. M. Rajabian, Mr. Y. Emadi, and Mr. H. Rajabian have been arrested and prosecuted before the Tehran Court on charges of insulting Islamic sanctities, making propaganda against the State, and publishing blasphemous audio-visual material insulting the Islamic sanctities. In spite of the information supplied by the Government, the Special Rapporteur finds that the Government, in its reply, does not sufficiently address the concerns, legal obligations, and questions raised concerning the ill-treatment and torture of these individuals while in custody in the initial communication, thereby prompting him to infer that the Government has failed to fully and expeditiously cooperate with the mandate issued by the Human Rights Council in resolution 25/13.

240. In the absence of information to the contrary, the Special Rapporteur concludes that there is substance in the allegations presented in the initial communication, and is therefore of the view that the Government of Iran, by failing to protect the physical and psychological integrity of Mr. M. Rajabian, Mr. Y. Emadi and Mr. H. Rajabian, including by subjecting them to torture, including by the use of prolonged solitary confinement; the use of electric shock against Mr. M. Rajabian; and the extraction of a forced confession, which was used as the basis for sentencing them to imprisonment and fine, has violated their right be free from torture or cruel, inhuman or degrading

treatment as provided by article 7 of International Covenant on Civil and Political Rights (ICCPR).

241.In this context, the Special Rapporteur would like to draw the Government's attention to paragraph 7(c) of Human Rights Council Resolution 16/23 that urges states to ensure that no confession extracted under torture may be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made. Further, in the Special Rapporteur's interim report to the General Assembly of 5 August 2011 (A/66/268), he defined solitary confinement, in accordance with the Istanbul Statement on the Use and Effects of Solitary Confinement, as the physical and social isolation of individuals who are confined in their cells for 22 to 24 hours a day. He observed that while solitary confinement for short periods of time may be justified under certain circumstances when adequate and effective safeguards in place, the use of prolonged (in excess of 15 days under conditions of total isolation) or indefinite solitary confinement causes severe mental and physical pain or suffering. The Special Rapporteur further recalls paragraph 28 of the General Assembly resolution 68/156, stating that prolonged or indefinite solitary confinement runs afoul of the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment. Furthermore, due to the prisoner's lack of communication, as well as the lack of witnesses inside the prison, solitary confinement may also give rise to other acts of torture or ill-treatment.

242.The Special Rapporteur urges the Government of the Islamic Republic of Iran to comply with its obligations under international customary law to investigate, prosecute, and punish all acts of torture and cruel, inhuman, or degrading treatment or punishment as codified, inter alia, in the Convention against Torture (CAT) and the ICCPR.

JUA 26/04/2016 Case No. IRN 9/2016 State Reply: 07/09/2016 and 16/11/2016 **Allegations concerning the arbitrary detention and sentencing of Mr. Omid Kokabee, and denial of access to adequate medical treatment while in detention.**

243.The Special Rapporteur thanks the Islamic Republic of Iran for its replies, dated 7 September 2016 and 16 November 2016, to the present communication.

244.The Special Rapporteur welcomes the information provided by the Government indicating that Mr. Kokabee was released from prison on 25 May 2016 with the postponement of the verdict in his case; and that, subsequently, following his conviction on charges of cooperation with hostile states and espionage, having met the due process of the law, Mr. Kokabee "could be . . . conditionally released for three years and was released" on 24 August 2016, under article 58 of the Islamic Penal Code. The Special Rapporteur takes note of the information specifying the medical treatment afforded to Mr. Kokabee, while in detention. In spite of the information supplied by the Government, its reply fails to confirm that Mr. Kokabee had sufficient access to timely and adequate diagnosis and treatment while in detention, and that the Government has adopted policies and regulations to ensure proper and adequate medical treatment of prisoners in similar situations, and to protect the human rights of vulnerable prison populations and those convicted of political or national security crimes.

245.In the absence of information to the contrary, the Rapporteur concludes that there is substance in the allegations presented in the initial communication, available via the link above, and therefore that the Government of Iran, by failing to provide Mr. Kokabee with timely and adequate diagnosis and treatment of kidney cancer, which caused him to lose his right kidney on 20 April 2016, and by failing to protect his physical and psychological integrity, has violated his right to be free from torture, cruel, inhuman or degrading treatment or punishment as provided by Article 7 of the

International Covenant on Civil and Political Rights (ICCPR) and customary international law.

246. The Special Rapporteur draws the attention of the Government to the U.N. Standard Minimum Rules for the Treatment of Prisoners ("Mandela Rules") and, in particular, Rule 27(1), which provides that "[a]ll prisons shall ensure prompt access to medical attention in urgent cases. Prisoners who require specialized treatment or surgery shall be transferred to specialized institutions or to civil hospitals. Where a prison service has its own hospital facilities, they shall be adequately staffed and equipped to provide prisoners referred to them with appropriate treatment and care."

247. The Special Rapporteur urges the Government to comply with its obligation, under international customary law, to prevent, investigate, prosecute and punish all acts of torture and other cruel, inhuman or degrading treatment or punishment, as codified, inter alia, in the Convention against Torture (CAT).

JUA 13/05/2016 Case No. IRN 13/2016 State Reply: 01/11/2016 **Allegations of torture and imposition of the death penalty upon a juvenile.**

248. The Special Rapporteur thanks the Islamic Republic of Iran for its reply, dated 1 November 2016, to the present communication.

249. The Special Rapporteur takes note of the information provided by the Government concerning the retrial and sentencing of Mr. X, a juvenile, to death, and of the information that the sentence is currently suspended whilst the consent of the plaintiffs' relatives to commute the death sentence is being sought. In spite of the information supplied by the Government, the Special Rapporteur finds that the Government, in its reply, does not sufficiently address the concerns, legal obligations, and questions raised concerning the ill-treatment and torture of Mr. X in the initial communication, thereby prompting him to infer that the Government has failed to fully and expeditiously cooperate with the mandate issued by the Human Rights Council in resolution 25/13.

250. In the absence of information to the contrary, the Special Rapporteur concludes that there is substance in the allegations presented in the initial communication, available via the link above, and is therefore of the view that the Government of Iran, by sentencing Mr. X, a juvenile, to the death penalty; employing solitary confinement against Mr. X for 15 days; and extracting a confession through the use of torture, has violated his right to be free from torture or cruel, inhuman or degrading treatment, as provided by article 7 of the International Covenant on Civil and Political Rights (ICCPR).

251. As observed by the Special Rapporteur in his 2012 report to the General Assembly (A/67/279), there is evidence of an evolving standard within international bodies and a robust State practice to frame the debate about the legality of the death penalty within the context of the fundamental concepts of human dignity and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. This evolving standard, along with the resulting illegality of the death penalty under such prohibition, is developing into a norm of customary law, if it has not already done so (para. 74). The Special Rapporteur further recalls that the execution of persons who are juveniles is per se a violation of an existing norm of customary international law (para. 64). The Special Rapporteur calls upon all States to reconsider whether the use of the death penalty per se respects the inherent dignity of the human person, causes severe mental and physical pain or suffering and constitutes a violation of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment (para. 79).

252.It has further come to the attention of the Special Rapporteur that the Government executed Mr. X. on 18 July 2016. The Rapporteur strongly condemns the execution of Mr. X. and concludes that the Government of Iran, in carrying out his execution, has violated Mr. X's right to be free from torture and other cruel, inhuman, or degrading treatment or punishment, as provided by article 6(2) of the ICCPR and article 37(a) of the Convention on Convention on the Rights of the Child (CRC). The Rapporteur strongly urges the Government of Iran to immediately cease the imposition of death sentences on juveniles, and abolish the practice of executions since capital punishment in Iran is imposed and carried out in violation of binding norms of international law.

JUA 07/06/2016 Case No. IRN 16/2016 State Reply: None to Date **Allegations concerning the arbitrary arrest, detention, and denial of due process guarantees to Mr. Nizar Ahmed Zakka, a Lebanese citizen.**

253.The Special Rapporteur regrets that the Government of the Islamic Republic of Iran has not replied to the present communication, thereby failing to cooperate with the mandate issued by the Human Rights Council in its resolution 25/13.

254.In the absence of information to the contrary, the Special Rapporteur concludes that there is substance in the allegations presented in the initial communication, available via the link above, and that the Government of the Islamic Republic of Iran, by arbitrarily arresting and detaining Mr. Zakka in connection to the exercise of his right to freedom of peaceful assembly; denying him due process guarantees; and subjecting him to solitary confinement and long interrogation sessions, has violated his right to be free from torture and other forms of cruel, inhuman and degrading treatment, as provided by articles 1, 2, and 16 of the Convention against Torture (CAT).

255.With regards to the allegations of solitary confinement, the Special Rapporteur reminds the Government that in his report to the General Assembly of 5 August 2011 (A/66/268), he defined solitary confinement, in accordance with the Istanbul Statement on the Use and Effects of Solitary Confinement, as physical and social isolation of individuals who are confined in their cells for 22 to 24 hours a day. He observed that while solitary confinement for short periods of time may be justified under certain circumstances, with adequate and effective safeguards in place, the use of prolonged (in excess of 15 days) or indefinite solitary confinement may never constitute an instrument of the State, as it may cause severe mental and physical pain or suffering. This point has been reiterated in paragraph 28 of the General Assembly resolution 68/156, which states that prolonged or indefinite solitary confinement runs afoul of the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment.

256.The Special Rapporteur urges the Government of the Islamic Republic of Iran to take all necessary measures to ensure the full protection of Mr. Zakka against any additional violations of his human rights, especially his detention in solitary confinement without charges, and to comply with its obligation, under CAT, to investigate, prosecute and punish all acts of torture and other cruel, inhuman or degrading treatment or punishment, and to afford to Mr. Zakka appropriate remedies, including reparations and rehabilitation services if needed.

JUA 01/07/2016 Case No. IRN 20/2016 State Reply: 25/08/2016 **Allegations concerning prolonged solitary confinement and lack of communication with her family of Ms. Nazanin Zaghari-Ratcliffe.**

257.The Special Rapporteur thanks the Government of the Islamic Republic of Iran for its reply, dated 25 August 2016, to the present communication, available via the link above.

258. The Special Rapporteur takes note of the information provided by the Government and welcomes the Government's initiative to allow for daily contact between Ms. Zaghari-Ratcliffe and her child. However, in spite of the information supplied by the Government, its reply fails to respond to the allegations of prolonged solitary confinement. The Special Rapporteur hence finds that the Government, in its reply, does not sufficiently address the concerns, legal obligations, and questions raised in the initial communication, which prompts him to infer that the Government fails to fully and expeditiously cooperate with the mandate issued by the Human Rights Council in its resolution 25/13.

259. In the absence of information to the contrary, the Special Rapporteur concludes that there is substance in the allegations presented in the initial communication, and is therefore of the view that the Government of the Islamic Republic of Iran, by failing to protect the physical and psychological integrity of Ms. Zaghari-Ratcliffe as a consequence of her prolonged solitary confinement of at least 45 days, has violated her right to be free from torture or cruel, inhuman or degrading treatment, as provided by article 7 of the International Covenant on Civil and Political Rights (ICCPR) and customary international law.

260. In the Special Rapporteur's interim report to the General Assembly of 5 August 2011 (A/66/268), the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment defined solitary confinement, in accordance with the Istanbul Statement on the Use and Effects of Solitary Confinement, as the physical and social isolation of individuals who are confined in their cells for 22 to 24 hours a day. He observed that while solitary confinement for short periods of time may be justified under certain circumstances, with adequate and effective safeguards in place, the use of prolonged (in excess of 15 days) or indefinite solitary confinement may never constitute a legitimate instrument of the State, as it may cause severe mental and physical pain or suffering, a point which has been reiterated in paragraph 28 of the General Assembly resolution 68/156, stating that prolonged or indefinite solitary confinement runs afoul of the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment. Furthermore, due to the prisoner's lack of communication, as well as the lack of witnesses inside the prison, solitary confinement may also give rise to other acts of torture or ill-treatment.

261. The Special Rapporteur strongly urges the Government of Iran to fulfill its obligations under international customary law, to investigate, prosecute and punish all acts of torture and other cruel, inhuman or degrading treatment or punishment, as codified, inter alia, in the Convention against Torture. Further, the Special Rapporteur would like to stress the importance of sustaining regular and predictable contact between Ms. Zaghari-Ratcliffe and her child, and of putting in place procedures for the same between Ms. Zaghari-Ratcliffe and her other family members.

JUA 05/08/2016 Case No. IRN 22/2016 State Reply: None to date **Allegations concerning the torture and imminent risk of execution of Mr. Barzan Nasrollah Zadeh, a juvenile offender.**

262. The Special Rapporteur regrets that the Government of the Islamic Republic of Iran has not replied to the present communication, thereby failing to cooperate with the mandate issued by the Human Rights Council in its resolution 25/13.

263. In the absence of information to the contrary, the Special Rapporteur concludes that there is substance in the allegations presented in the initial communication, available via the link above, and is therefore of the view that the Government of Iran, by sentencing Mr. Zadeh, a juvenile offender, to death, following repeated instances of torture by

intelligence officials and a trial that failed to meet international standards of fair trial and due process, has violated his right to be free from torture or cruel, inhuman or degrading treatment, as provided by Article 6(2) and 7 of the International Covenant on Civil and Political Rights (ICCPR) and articles 1, 2, and 16 of Convention against Torture (CAT).

264. As observed by the Special Rapporteur in his 2012 report to the General Assembly (A/67/279), there is evidence of an evolving standard within international bodies and a robust State practice to frame the debate about the legality of the death penalty within the context of the fundamental concepts of human dignity and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. This evolving standard, along with the resulting illegality of the death penalty if imposed or executed under circumstances that violate such prohibition, is developing into a norm of customary law, if it has not already done so (para. 74). Furthermore, any judgment imposing the death sentence on juvenile offenders violates and already existing and binding norm of customary international law. In addition, such death sentences amount to cruel, inhuman and degrading punishment, which is prohibited inter alia in the CAT, and violate the Government's obligation under article 37(a) of the Convention on the Rights of the Child (CRC) to refrain from imposing the death penalty for offences committed by persons below 18 years of age.

265. The Special Rapporteur calls upon all States to reconsider whether the use of the death penalty per se respects the inherent dignity of the human person, causes severe mental and physical pain or suffering and constitutes a violation of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment (para. 79). Even if this customary norm is still under way, the Special Rapporteur considers that most conditions under which capital punishment is actually applied render the punishment tantamount to torture and that under many other, less severe conditions, it still amounts to cruel, inhuman or degrading treatment (para. 75).

266. The Special Rapporteur strongly urges the Government of the Islamic Republic of Iran to refrain from carrying out death sentences, particularly against minors, to abolish the practice of executions altogether, and to rigorously observe the restrictions and conditions imposed by article 7 of the International Covenant on Civil and Political Rights.

Israel

JUA 23/12/2015 Case No. ISR 10/2015 State Reply: None to date **Allegations of arbitrary arrest and detention and the solitary confinement of Palestinian human rights defender Mr. Judeh Deeb Ibrahim Jamal along with two colleagues, Ms. Najwan Odeh and Mr. Fadi Mansra.**

267. The Special Rapporteur regrets that the Government of Israel has not replied to the present communication, thereby failing to cooperate with the mandate issued by the Human Rights Council in its resolution 25/13.

268. In the absence of information to the contrary, the Special Rapporteur concludes that there is substance in the allegations presented in the initial communication, available via the link above, and therefore that the Government of Israel, by employing solitary confinement against Mr. Judeh, Ms. Najwan and Mr. Mansra, for more than 33 days, has violated their rights to be free from torture or cruel, inhuman or degrading treatment, as provided by articles 1, 2, and 16 of the Convention against Torture.

269. With regard to solitary confinement, the Special Rapporteur in interim report to the General Assembly of 5 August 2011 (A/66/268) on torture and other cruel, inhuman or degrading treatment or punishment defined solitary confinement, in accordance with the Istanbul Statement on the Use and Effects of Solitary Confinement, as the physical and social isolation of individuals who are confined in their cells for 22 to 24 hours a day. He observed that while solitary confinement for short periods of time may be justified under certain circumstances, with adequate and effective safeguards in place, the use of prolonged (in excess of 15 days) or indefinite solitary confinement may never constitute a legitimate instrument of the State, as it may cause severe mental and physical pain or suffering, a point which has been reiterated in paragraph 28 of the General Assembly resolution 68/156 – prolonged or indefinite solitary confinement runs afoul of the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment.

270. The Special Rapporteur urges the Government of Israel immediately to cease the prolonged solitary confinement of Mr. Judeh, Ms. Najwan, and Mr. Mansra, bring its use of solitary confinement in line with its obligations under international law and provide complete and effective redress to the victims in this case.

JUA 24/12/2015 Case No. ISR 11/2015 State Reply: None to date **Allegations concerning the imminent refoulement of Mr. X, a Palestinian national, to Gaza, where he is at high risk of being subjected to torture and other forms of ill-treatment.**

271. The Special Rapporteur regrets that the Government of Israel has not replied to the present communication, thereby failing to cooperate with the mandate issued by the Human Rights Council in its resolution 25/13.

272. In the absence of information to the contrary, the Special Rapporteur concludes that there is substance in the allegations presented in the initial communication, available via the link above, and is therefore of the view that the Government of Israel, by seeking to return Mr. X to Gaza, where he was subjected to torture and ill treatment and is again facing a high risk of being tortured, has violated his right to be free from torture or cruel, inhuman or degrading treatment, as provided by articles 1, 2, 3, and 16 of the Convention against Torture (CAT).

273. The Special Rapporteur would like to draw the Government's attention to article 3 of CAT, which provides that no State party shall expel, return ("refouler"), or extradite a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture. In this regard, he notes General Comment 20 on the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, in which the Human Rights Committee states that State parties "must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of extradition, expulsion or refoulement" (para. 9). Furthermore, General Assembly Resolution 61/253 urges States "not to expel, return ("refouler"), extradite or in any other way transfer a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture" (para. 9).

274. The Special Rapporteur strongly urges the Government of Israel to protect the right of Mr. X to be free from torture or cruel, inhuman or degrading treatment, and refrain from returning Mr. X to Gaza where he is at risk of being tortured.

JUA 8/12/2015 Case No. ISR 12/2015 State Reply: None to date **Allegations of arbitrary arrest, incommunicado detention and acts of intimidation and threats,**

including death threats, against Mr. Issa Amro the coordinator of Youth Against Settlements (YAS).

275. The Special Rapporteur regrets that the Government of Israel has not replied to the present communication, thereby failing to cooperate with mandate issued by the Human Rights Council in its resolution 25/13.

276. In the absence of information to the contrary, the Special Rapporteur concludes that there is substance in the allegations presented in the initial communication, available via the link above, and is therefore of the view that, by subjecting Mr. Amro to arbitrary arrest and deplorable conditions of detention including blindfolding him with his hands cuffed behind his back in a foul smelling bathroom stall for four and a half hours during which the soldiers repeatedly humiliated him and threatened him with death, the Government of Israel has failed to protect the physical and psychological integrity of Mr. Amro. As a result, the Special Rapporteur finds that Israel has violated the right of Mr. Amro to be free from torture or cruel, inhuman or degrading treatment, as provided by Articles 1, 2 and 16 of the Convention against Torture and Article 7 of the International Covenant on Civil and Political Rights.

277. The Special Rapporteur urges the Government of Israel to comply with its obligations under international customary law, to investigate, prosecute and punish all acts of torture and other cruel, inhuman, or degrading treatment or punishment, as codified, inter alia, in the Convention against Torture.

JUA 26/02/2016 Case No. ISR 2/2016 State Reply: None to date **Allegations of torture, ill-treatment, and the non-consensual medical treatment of Mr. Mohammad Al-Qiq, who is currently held in HaEmek hospital in Afula, Israel.**

278. The Special Rapporteur regrets that the Government of Israel has not replied to the present communication, thereby failing to cooperate with the mandate issued by the Human Rights Council in its resolution 25/13.

279. In the absence of information to the contrary, the Special Rapporteur concludes that there is substance in the allegations presented in the initial communication, available via the link above, and is therefore of the view that the Government of Israel, by force-feeding and imposing medical treatment on prisoners against their will, has violated the right of Mohammad Al-Qiq to be free from cruel, inhuman or degrading treatment, as provided by articles 1, 2, and 16 of the Convention against Torture.

280. The Special Rapporteur wishes to stress that "feeding induced by threats, coercion, force or use of physical restraints of individuals, who have opted for the extreme recourse of a hunger strike to protest against their detention, are, even if intended for their benefit, tantamount to cruel, inhuman and degrading treatment." (OHCHR Joint Press Release, 28 July 2015)

281. The Special Rapporteur calls upon the Government of Israel to cease immediately the practice of force-feeding, to refrain from using other coercive measures, and to look for alternative solutions to extreme situations resulting from hunger strikes, including good-faith dialogue with prisoners. The Special Rapporteur further offers the Government of Israel its guidance and assistance in these matters.

JAL 21/04/2016 Case No. ISR 4/2016 State Reply: None to date **Allegations of torture and ill-treatment suffered by the detainees during interrogations and detention at the Shikma Interrogation Facility in Ashkelon, Israel.**

282.The Special Rapporteur regrets that the Government of Israel has not replied to present communication, thereby failing to cooperate with the mandate issued by the Human Rights Council in its resolution 25/13.

283.In the absence of information to the contrary, the Special Rapporteur concludes that there is substance to the allegations presented in the initial communication, available via the link above and thus, that the Government) of Israel has engaged in systematic ill-treatment of Palestinian detainees at the Shikma Prison in Ashkelon by maintaining deplorable conditions at the detention centers, including inadequate access to light and healthcare, sleep deprivation, inadequate heating; by torturing detainees to obtain confessions; and by subjecting detainees to prolonged solitary confinement, thereby violating their right to be free from torture or cruel or degrading treatment as provided by Article 1, 2 and 16 of the Convention against Torture (CAT).

284.In the Special Rapporteur's interim report to the General Assembly of 5 August 2011 (A/66/268), he defined solitary confinement, in accordance with the Istanbul Statement on the Use and Effects of Solitary Confinement, as the physical and social isolation of individuals who are confined in their cells for 22 to 24 hours a day. He observed that while solitary confinement for short periods of time may be justified under certain circumstances, with adequate and effective safeguards in place, the use of prolonged (in excess of 15 days) or indefinite solitary confinement may never constitute a legitimate instrument of the State, as it may cause severe mental and physical pain or suffering. The Special Rapporteur recalls paragraph 28 of the General Assembly resolution 68/156, stating that prolonged or indefinite solitary confinement runs afoul of the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment. Furthermore, due to the prisoner's lack of communication, as well as the lack of witnesses inside the prison, solitary confinement may also give rise to other acts of torture or ill-treatment.

285.With respect to the conditions of imprisonment, the Special Rapporteur directs the Government to the Nelson Mandela Rules (the United Nations Standard Minimum Rules for the Treatment of Prisoners), which establish minimum standards of healthy accommodation (Rule 13) and adequate and prompt provision of health care (Rules 24 and 27).

286.The Special Rapporteur strongly urges the Government of Israel to put an immediate end to torture and bring the conditions of detention at the Shikma Interrogation Facility into accord with the state's obligations under international law, and to comply with its obligation to investigate, prosecute and punish all acts of torture and other cruel, inhuman or degrading treatment or punishment, as codified, inter alia, in the CAT.

JUA 18/07/2016 Case No. ISR 7/2016 State Reply: None to date **Allegations of the arbitrary arrest, detention, torture and ill-treatment of, and denial of due process and fair trial guarantees to two Palestinian children, aged 15 and 13.**

287.The Special Rapporteur regrets that the Government of Israel has not replied to the present communication, thereby failing to cooperate with the mandate issued by the Human Rights Council in its resolution 25/13.

288.In the absence of information, the Special Rapporteur concludes that there is substance in the allegations presented in the initial communication, available via the link above. Thus, the Special Rapporteur concludes that the Government of Israel, by failing to protect the physical and psychological integrity of two Palestinian children, aged 15 and 13, and by subjecting them to torture, ill-treatment, and arbitrary arrest and

detention, has violated their to be free from torture or cruel, inhuman or degrading treatment, as provided by articles 1 and 16 of the Convention against Torture (CAT).

289. The Special Rapporteur strongly urges the Government of Israel to put an immediate end to torture and mistreatment, and to conduct a prompt, impartial, and effective investigation of the alleged acts of torture, to prosecute and punish those responsible, and to provide adequate redress to the victims, as codified *inter alia* in the CAT and in customary international law. The Special Rapporteur further calls upon the Government to take appropriate measures to ensure the physical and psychological integrity of all the persons, and particularly children, who are arrested and detained.

JUA 19/08/2016 Case No. ISR 11/2016 State Reply: 31/08/2016 **Allegations concerning the arbitrary detention, solitary confinement, excessive use of restraints, and risk of force-feeding of Mr. Bilal Kayed, a Palestinian prisoner who has been on hunger strike in protest of his detention.**

290. The Special Rapporteur thanks the State of Israel for its reply, dated 31 August 2016, to the present communication, available via the link above.

291. The Special Rapporteur welcomes the information provided by the State regarding Mr. Kayed's access to medical treatment during his hunger strike. He takes note of the information provided by the State about allegations concerning forced feeding, excessive use of restraints, and denial of visitation rights to the family of Mr. Kayed. In spite of the information supplied by the Government, its reply fails to provide information about the allegations of solitary confinement of Mr. Kayed from September 2015 until his scheduled release on 13 June 2016 and measures taken to ensure his physical and psychological integrity. In addition, it does not sufficiently address the allegations of the risk of forced feeding and excessive use of restraints against him.

292. In the absence of information to the contrary, the Special Rapporteur concludes that there is substance in the allegations presented in the initial communication and thus that the State of Israel, by failing to protect the physical and psychological integrity of Mr. Kayed, including by subjecting him to solitary confinement, the risk of forced feeding, and excessive use of restraints, has violated his right to be free from torture, cruel, inhuman or degrading treatment or punishment as provided by Article 7 of the International Covenant on Civil and Political Rights (ICCPR) and Articles 1, 2, and 16 of the Convention Against Torture (CAT), and has failed to comply with its obligation, under international customary law, to investigate, prosecute and punish all acts of torture and other cruel, inhuman or degrading treatment or punishment, as codified, *inter alia*, in the CAT.

293. In his interim report to the General Assembly of 5 August 2011 (A/66/268), the Special Rapporteur defined solitary confinement, in accordance with the Istanbul Statement on the Use and Effects of Solitary Confinement, as the physical and social isolation of individuals who are confined in their cells for 22 to 24 hours a day. He observed that while solitary confinement for short periods of time may be justified under certain circumstances, with adequate and effective safeguards in place, the use of prolonged (in excess of 15 days) or indefinite solitary confinement may never constitute a legitimate instrument of the State, as it may cause severe mental and physical pain or suffering, a point which has been reiterated in paragraph 28 of the General Assembly resolution 68/156, stating that prolonged or indefinite solitary confinement runs afoul of the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment.

294. The Special Rapporteur further reiterates his view that "feeding induced by threats, coercion, force or use of physical restraints of individuals, who have opted for the extreme recourse of a hunger strike to protest against their detention, are, even if intended for their benefit, tantamount to cruel, inhuman and degrading treatment, which in turn may amount to torture" (OHCHR Joint Press Release, 28 July 2015). Although Mr. Kayed was not subject to forced feeding, the Government's policy, which provides for such action, violates the Government's obligations to prevent torture and cruel, inhuman and degrading treatment under customary international law as codified in the CAT.

295. The Special Rapporteur strongly urges the State of Israel to protect the right of Mr. Kayed to be free from torture or cruel, inhuman or degrading treatment. The Special Rapporteur calls upon the State of Israel to immediately rescind the policy and practice of force-feeding and refrain from using other coercive measures, and to look for alternative solutions to extreme situations resulting from hunger strikes, including good-faith dialogue with prisoners. He further offers the Government of Israel guidance and assistance in these matters. The Special Rapporteur also reminds the State of Israel that the Committee against Torture and the Human Rights Committee have consistently found that conditions of detention can amount to inhuman and degrading treatment.

Japan

JOP. 10/04/2015 Case No: JPN 1/2016 State Reply: None to date **Allegations of inadequate consultation and access to truth, justice and reparation for Korean comfort women through the agreement reached between the Government of Japan and the Government of the Republic of Korea on 28 December 2015.**

296. The Special Rapporteur regrets that the Government of Japan has not replied to the present communication, thereby failing to cooperate with the mandate issued by the Human Rights Council in its resolution 25/13.

297. In the absence of information to the contrary, the Special Rapporteur concludes that there is substance to the allegations presented in the initial communication, available via the link above, and is therefore of the view that the Government of Japan, by failing to provide sufficient remedies and individual reparations for the harm inflicted to the so-called "comfort women," who were victims of sexual slavery and gender-based violence during the Second World War, and by failing to adequately investigate and prosecute these allegations of ill-treatment and torture, while stating that the issue is now resolved "finally and irreversibly," has violated their right to be free from torture or cruel or inhuman or degrading treatment, as provided by articles 1, 2, 7, 12, 14, and 16 of the Convention against Torture.

298. The Special Rapporteur recalls that, as he stated in his 2016 thematic report, "reparations must be premised on a full understanding of the gendered nature and consequences of the harm suffered and take existing gender inequalities into account to ensure that they are not themselves discriminatory" (A/HRC/31/57 para. 66). Further, he stated, "[t]hey must address the context of structural discrimination in which violations occurred and aim to provide both restitution and rectification. Reparations must have a transformative impact, addressing the underlying causes and consequences of violations, and offer continued protection for and respectful engagement with victims" (A/HRC/31/57 para. 66).

299. The Special Rapporteur further stresses that, as noted in the report, "reparations for women cannot be just about returning them to the situation in which they were found before the individual instance of violence, but instead should strive to have a transformative potential. This implies that reparations should aspire, to the extent possible, to subvert instead of reinforcing pre-existing patterns of cross-cutting structural subordination, gender hierarchies, systemic marginalization and structural inequalities that may be the root cause of the violence that women experienced before, during and after the conflict. Complex schemes of reparations, such as those that provide a variety of types of benefits, can better address the needs of female beneficiaries in terms of transformative potential, both on a practical material level and in terms of their self-confidence and esteem. Measures of symbolic recognition can also be crucial. They can simultaneously address both the recognition of victims and the dismantling of patriarchal understandings that give meaning to the violations" (A/HRC/34/22, para.85).

300. The Special Rapporteur calls on the Government of Japan to comply with its international legal obligations under CAT, particularly under article 14, which requires that state parties ensure "that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible."

JPN 2/2016: 23/05/2016 Case No. JPN 1/2016 State Reply: 25/07/2016 **Allegations concerning Law No. 111 of 2003, which contains a number of provisions permitting sterilization and other medical procedures coercively carried out on transgender adults and children seeking gender reassignment in Japan.**

301. The Special Rapporteur thanks the Government of Japan for its reply, dated 22 July 2016, to the present communication. The Rapporteur takes note of the Government's request that it be permitted a time extension for preparation of the response. However, he regrets that, six months later, no further information or subsequent reply from the Government has been forthcoming regarding the allegations of forced or coercive sterilization of individuals seeking gender reassignment in Japan. The Rapporteur hence finds that the Government, in its reply, does not sufficiently address the concerns, legal obligations, and questions raised in the initial communication, which prompts him to conclude that the Government fails to fully and expeditiously cooperate with the mandate issued by the Human Rights Council in its resolution 25/13.

302. In the absence of information to the contrary, the Special Rapporteur concludes that there is substance in the allegations presented in the initial communication, available via the link above, and is therefore of the view that the Government of Japan, by failing to amend its Law No. 111, which subjects transgender persons to (a) potentially humiliating and stigmatising medical examinations and diagnoses, and (b) mandatory and therefore coercive medical procedures of gender reassignment as a prerequisite to obtaining legal recognition of their gender identity, violates the right of transgender persons to be free from torture or cruel, inhuman or degrading treatment, as provided by articles 1, 2, and 16 of the Convention against Torture (CAT).

303. As observed by the Special Rapporteur in his 2016 thematic report to the Human Rights Council (A/HRC/31/57), forced or otherwise involuntary gender reassignment surgery, sterilization or other coercive medical procedures of individuals seeking gender reassignment, are rooted in discrimination on the basis of sexual orientation and gender identity, and thus violate the rights to physical integrity and self-determination of individuals and amount to ill-treatment or torture (para. 49). The Special Rapporteur calls upon all States to "outlaw forced or coerced sterilization in all circumstances and

provide special protection to individuals belonging to marginalized groups; and ensure that health-care providers obtain free, full and informed consent for such procedures and fully explain the risks, benefits and alternatives in a comprehensible format, without resorting to threats or inducements, in every case" (para. 72(e)). Furthermore, he calls upon all States to "adopt transparent and accessible legal gender recognition procedures and abolish requirements for sterilization and other harmful procedures as preconditions" (para. 72(h)).

304. The Special Rapporteur strongly urges the Government of Japan to protect the right of the transgender persons to be free from torture or cruel, inhuman or degrading treatment, thereby ensuring compliance with its international legal obligation under the CAT.

Jordan

JUA 05/02/2016 Case No. JOR 1/2016 State Reply: None to date **Allegation concerning the prolonged solitary confinement of Dr. Eyad Qunaibi.**

305. The Special Rapporteur regrets that the Government of Jordan has not replied to the present communication, thereby failing to cooperate with the mandate issued by the Human Rights Council in its resolution 25/13.

306. In the absence of information to the contrary, the Special Rapporteur concludes that there is substance in the allegations presented in the initial communication, available via the link above, and is therefore of the view that the Government of Jordan, by subjecting Dr. Qunaibi, a professor of pharmacology at the University of Applied Sciences in Amman, Jordan, to prolonged solitary confinement, has violated his right to be free from torture or cruel, inhuman or degrading treatment, as provided by article 7 of the ICCPR and articles 1, 2 and 16 of Convention against Torture.

307. The Special Rapporteur would like to recall his interim report to the General Assembly of 5 August 2011 (A/66/268), wherein he defined solitary confinement, in accordance with the Istanbul Statement on the Use and Effects of Solitary Confinement, as the physical and social isolation of individuals who are confined in their cells for 22 to 24 hours a day. He observed that while solitary confinement for short periods of time may be justified under certain circumstances, with adequate and effective safeguards in place, the use of prolonged (in excess of 15 days) or indefinite solitary confinement may never constitute a legitimate instrument of the State, as it may cause severe mental and physical pain or suffering, a point which has been reiterated in paragraph 28 of the General Assembly Resolution 68/156. Prolonged or indefinite solitary confinement runs afoul of the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment. Furthermore, due to the prisoner's lack of communication, as well as the lack of witnesses inside the prison, the Special Rapporteur emphasizes that solitary confinement may also give rise to other acts of torture or ill-treatment.

308. The Special Rapporteur strongly urges the Government of Jordan to protect the right of Dr. Qunaibi to be free from torture or cruel, inhuman or degrading treatment and comply with its obligations under international law through the immediate cessation of his solitary confinement and the provision of redress to the victim for any harm resultant from his solitary confinement.

Kenya

JAL 26/07/2016 Case No. KEN 4/2016 State Reply: None to Date **Allegations concerning the alleged disappearance, torture, and extra-judicial executions of a human rights lawyer, Mr. Willie Kimani, his client Mr. Josephat Mwenda, and their driver Mr. Joseph Muiruri.**

309. The Special Rapporteur regrets that the Government of Kenya has not replied to the present communication, thereby failing to cooperate with the mandate issued by the Human Rights Council in its resolution 25/13.

310. In the absence of information to the contrary, the Special Rapporteur concludes that there is substance in the allegations presented in the initial communication, available via the link above, and is therefore of the view that the Government of Kenya, by harassing, shooting, and arbitrarily arresting Mr. Josephat Mwenda on false charges, and subsequently by abducting, disappearing, torturing, and extra-judicially executing Mr. Mwenda, his lawyer, Mr. Willie Kimani, and their driver Mr. Joseph Muiruri, has violated their rights to life and to be free from torture or cruel, inhuman or degrading treatment, as provided by arts. 1, 2, and 16 of the CAT, and articles 6(2) and 6(4) of the International Covenant on Civil and Political Rights.

311. The Special Rapporteur calls on the Government of Kenya to undertake a prompt, independent, and effective investigation into the allegations of persecution, torture and cruel, inhuman or degrading treatment, disappearance, and extra-judicial executions of the victims, to provide full redress to their family members, and undertake effective measures to prevent the recurrence of these acts. The Special Rapporteur expects to be kept fully informed of the outcome of the investigation and proceedings.

Korea (Republic of)

JUA 10/03/2016 Case No. KOR 2/2016 State Reply: 15/06/2016 **Allegations of inadequate redress and reparation for women who experienced sexual violence as "comfort women."**

312. The Special Rapporteur thanks the Government of the Republic of Korea for its reply, dated 15 June 2016, to the present communication.

313. The Special Rapporteur regrets that the Government, in its reply, does not sufficiently address the concerns, legal obligations, and questions raised in the initial communication, available in the link above, which prompts him to infer that the Government fails to fully and expeditiously cooperate with the mandate issued by the Human Rights Council in its resolution 25/13.

314. In the absence of information to the contrary, the Special Rapporteur hence finds that the Government of the Republic of Korea has violated the right of the 46 women survivors to be free from torture or cruel, inhuman or degrading treatment, by failing to negotiate with Japan sufficient measures aimed at granting access to justice, truth and adequate reparation for the survivors; failing to act with due diligence to inform the survivors of the agreement between the government of Korea and the Government of Japan; failing to consult with or involve the survivors in the negotiation process; and failing to ensure that the Japanese funds are explicitly dedicated to meeting the survivors needs for redress, in accordance with articles 1, 14 and 16 of the Convention against Torture.

315. The Special Rapporteur draws the attention of the State to his 2016 thematic report specifying that "Reparations must be premised on a full understanding of the gendered nature and consequences of the harm suffered and take existing gender inequalities into account to ensure that they are not themselves discriminatory" (see A/HRC/14/22, para. 32). They must address the context of structural discrimination in which violations occurred and aim to provide both restitution and rectification. Reparations must have a transformative impact, addressing the underlying causes and consequences of violations, and offer continued protection for and respectful engagement with victims (A/HRC/14/22). As stipulated in the Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation, victims must be empowered to help determine what forms of reparation are best suited to their situation. Adequate redress requires States to investigate, prosecute and punish perpetrators and inform the public of results (A/HRC/31/57, paras. 66-67). Furthermore, "While collective reparation and administrative reparation programmes may be acceptable as a form of redress, such programmes may not render ineffective the individual right to a remedy and to obtain redress" (CAT/C/GC/3 para. 20).

316. The Special Rapporteur urges the Government of the Republic of Korea to take all steps necessary to "ensure that victims of torture or ill-treatment obtain full and effective redress and reparation and compensation and the means for as full rehabilitation as possible," (CAT/C/GC/3, para. 5) and to prevent the repetition of such practices.

Kuwait

JUA 03/12/2015 Case No. KWT 6/2015 State Reply: 17/12/2015 and 21/01/2016
Allegations concerning the torture, ill-treatment, and arrest of eight Shia Muslim individuals.

317. The Special Rapporteur takes note of the information provided by the Government regarding the steps taken to criminalize torture and other ill-treatment in national legislation, and about efforts made to raise awareness among law enforcement officers and prison staff regarding the prohibition of torture and ill-treatment. The Special Rapporteur additionally takes note of the information that a forensic medical doctor examined Mr. Hasan Ahmed Abdulla al-Attar. The Special Rapporteur regrets that no information is provided as to the findings of the forensic medical examination.

318. The Special Rapporteur notes with particular concern the information provided by the Government that in the cases of the other seven named individuals, no examination by a medical doctor took place, on account of the fact that they were each examined by the "public prosecutor [who] found no evidence that they had sustained injuries that would call for forensic examination in order to determine whether an offense had been committed."

319. The Special Rapporteur recalls the importance of conducting forensic medical examinations into all allegations of torture, in accordance with the Istanbul Protocol, and calls upon the Government of Kuwait to comply with its obligation, under international customary law, to investigate, prosecute and punish all acts of torture and other cruel, inhuman or degrading treatment or punishment, as codified, inter alia, in the Convention against Torture (CAT).

320. The failure of the Government of Kuwait properly to investigate the allegations of torture and ill-treatment leads the Special Rapporteur to conclude that the right of these eight Shia Muslim individuals to be free from torture and abuse have been violated.

JUA 07/06/2016 Case No. KWT 2/2016 State Reply: 13/06/2016, 17/06/2016, 20/06/2016, and 03/08/2016 **Allegations concerning torture committed during interrogation and harsh conditions of detention against human rights defender M. Abdulhakim al-Fadhli.**

321. The Special Rapporteur thanks the Government of Kuwait for its replies, dated 13, 17 and 20 June 2016 and 3 August 2016, to the present communication, available via the link above. The Rapporteur notes that the Government intended to submit a further reply, but regrets it has not yet been received.

322. The Special Rapporteur takes note of the information provided by the Government concerning the legal grounds for the prosecution, conviction, and deportation of Mr. al-Fadhli, and the State's constitutional human rights provisions. However, the Government of Kuwait does not, in its reply, outline any measures taken to protect the physical and psychological integrity of Mr. al-Fadhli or to respond to or investigate his allegations. Hence, the Special Rapporteur finds that the Government does not sufficiently address the concerns, legal obligations, and questions raised in the initial communication, prompting him to infer that the Government fails to fully and expeditiously cooperate with the mandate issued by the Human Rights Council in its resolution 25/13.

323. In the absence of information to the contrary, the Special Rapporteur concludes that there is substance in the allegations presented in the initial communication, and is therefore of the view that the Government of Kuwait, by permitting Mr. al-Fadhli to be tortured during interrogation, extracting a statement from him under torture, and refusing him contact with his family, has violated articles 1, 2, 15, and 16 of the Convention against Torture (CAT).

324. The Special Rapporteur strongly urges the Government of Kuwait to immediately take measures to ensure Mr. al-Fadhli's physical and psychological integrity and protect him from torture or other cruel, inhuman or degrading treatment while under detention. He further urges the Government to undertake a prompt and impartial investigation of Mr. al Fadhli's allegations, to prosecute and punish those responsible, and to provide him reparations in accordance with articles 12 and 14 of the CAT.

Lebanon

JUA 29/06/2016 Case No. LBN 1/2016 State Reply: None to Date **Allegations concerning the torture, mistreatment, rape, and detention in inhumane conditions of Ms. Layal Al Kayaje, a Palestinian woman facing trial before a military court for 'defamation and libel against the Lebanese army.'**

325. The Special Rapporteur regrets that the Government of Lebanon has not replied to the present communication, thereby failing to cooperate with the mandate issued by the Human Rights Council in its resolution 25/13.

326. In the absence of information to the contrary, the Special Rapporteur concludes that there is substance in the allegations presented in the initial communication, available via the link above, and is therefore of the view that the Government of Lebanon, by failing to protect the physical and psychological integrity of Ms. Al Kayaje, including by

subjecting her to mistreatment, torture, and rape in detention, and by failing to conduct proper, impartial, and independent investigations into these allegations, has violated her rights to be free from torture or cruel or degrading treatment as provided by Article 1, 2 and 16 of the Convention against Torture (CAT).

327. The Special Rapporteur strongly urges the Government of Lebanon to immediately take measures to ensure Mr. al-Kayaje's physical and psychological integrity and protect her from torture or other cruel, inhuman or degrading treatment while under detention. He further urges the Government to undertake a prompt and impartial investigation of Ms. Al Kayaje's allegations, to prosecute and punish those responsible, and to provide her with reparations in accordance with articles 12 and 14 of the CAT.

Lesotho

JUA 19/02/2016 Case No. LSO 1/2016 State Reply: 01/06/2016 **Allegation of serious threats and attacks against Mr. Kgotso Nthontho.**

328. The Special Rapporteur thanks the Government of the Kingdom of Lesotho for its reply, dated 1 June 2016, to the present communication.

329. In spite of the information supplied by the Government, its reply fails to provide information about the allegations of serious threats and attacks against Mr. Nthontho. The Special Rapporteur hence finds that the Government in its reply does not sufficiently address the concerns, legal obligations, and questions raised in the initial communication, prompting him to conclude that the Government fails fully and expeditiously to cooperate with the mandate issued by the Human Rights Council in its resolution 16/23.

330. In the absence of information to the contrary, the Special Rapporteur concludes that there is substance in the allegations presented in the initial communication, available via the link, and thus, that the Government of the Kingdom of Lesotho, by subjecting Mr. Nthontho to persistent threats to his life, damaging his vehicle and home with gunshots, physically preventing him from consulting with a client in court (by means of the intervention of a member of the Lesotho Defense Force), targeting him on a hit list, breaking into his office, and otherwise subjecting him to harassment and threats, has violated his right to be free from cruel, inhuman or degrading treatment, as provided by the article 16 of the Convention against Torture (CAT).

331. The Special Rapporteur draws the attention of the Government to paragraph 8(a) of Human Rights Council Resolution 16/23, which reminds States that "intimidation and coercion, as described in article 1 of the Convention against Torture, including serious and credible threats, as well as death threats, to the physical integrity of the victim off a third person can amount to cruel, inhuman or degrading treatment or to torture."

332. The Special Rapporteur urges the Kingdom of Lesotho to comply with its legal obligations to investigate, prosecute and punish all acts of torture and other cruel, inhuman or degrading treatment, as provided by articles 7 and 12 of the CAT, and to provide the victim with reparations in accordance with articles 12 and 14 of the CAT.

Macedonia

JUA 04/03/2016 Case No. MKD 1/2016 State Reply: None to date **Allegation of the violation of the principle of non-refoulement, by denying the opportunity to state a**

claim that extradition, deportation or expulsion puts a person at risk of torture.

333. The Special Rapporteur regrets that the Government of the former Yugoslav Republic of Macedonia has not replied to the present communication, thereby failing to cooperate with the mandate issued by the Human Rights Council in its resolution 25/13.

334. In the absence of information to the contrary, the Special Rapporteur concludes that there is substance in the allegations presented in the initial communication, available via the link above, and is therefore of the view that the Government of Macedonia limits entry to those who can prove their identity and that they are from war-torn countries and in need of international protection, thereby denying immigrants a fair opportunity to state a claim that an impending extradition, deportation or expulsion, puts him or her at risk of torture. In that manner, the Government fails to meet its obligations under articles 1, 2, 3 and 16 of the Convention against Torture.

335. The Special Rapporteur reminds the Government that, as observed in his 2015 thematic report, "the absolute prohibition against refoulement, which is aimed at protecting individuals from torture and other ill-treatment, is stronger than that found in refugee law, meaning that persons may not be returned even when they may not otherwise qualify for refugee or asylum status under article 33 of the 1951 Convention relating to the Status of Refugees or domestic law." (A/70/303), para. 41)

336. The Special Rapporteur strongly urges the Government to take all necessary measures to ensure that its procedure at the border is brought fully in line with its obligations of non-refoulement under international law.

JOL 31/03/2016 Case no. MKD 2/2016 State Reply: None to date **Allegations of excessive use of force and torture by law enforcement officials against migrants, including Mr. X and Mr. Y, and allegations of their collective expulsion in violation of the principle of non-refoulement**.

337. The Special Rapporteur regrets that the Government of the former Yugoslav Republic of Macedonia has not replied to the present communication, thereby, failing to cooperate with the mandate issued by the Human Rights Council in its resolution 25/13.

338. In the absence of information to the contrary, the Special Rapporteur concludes that there is substance in the allegations presented in the initial communication, available via the link above, and is therefore of the view that the Government of the former Yugoslav Republic of Macedonia, violated its international obligations by failing to prevent law enforcement officials from using excessive force and physical violence against migrants, including inflicting electric shocks and flogging Mr. X and Mr. Y for crossing the Idomeni border. In addition, by failing to give migrants a fair opportunity to state a claim that an impending extradition, deportation or expulsion would put them at risk of torture or cruel, inhuman or degrading treatment, has violated the rights of Mr. X and Mr. Y, amongst other migrants, as provided by articles 1, 2, 3, and 16 of the Convention against Torture (CAT).

339. The Special Rapporteur reminds the Government that, as observed in his 2015 thematic report, "the absolute prohibition against refoulement, which is aimed at protecting individuals from torture and other ill-treatment, is stronger than that found in refugee law, meaning that persons may not be returned even if they do not otherwise qualify for refugee or asylum status under article 33 of the 1951 Convention relating to the Status of Refugees or domestic law." (A/70/303, para. 41).

340. The Special Rapporteur strongly urges the Government of the former Yugoslav Republic of Macedonia to comply with its obligations to investigate, prosecute and

punish all acts of torture and other cruel, inhuman, or degrading treatment or punishment, as codified in the CAT and to comply with the principle of non-refoulement under article 3 of the CAT. He further calls on the Government to take all necessary measures to ensure that its procedure at the border is brought fully in line with its obligations of non-refoulement under international law.

Malaysia

JUA 24/03/2016 Case No. MYS 3/2016 State Reply: None to date **Allegation of imminent execution of Mr. Gunasegar Pitchaymuthu, Mr. J Ramesh Jayakumar, and Mr. Sasivarnam Jayakumar, three Malaysian nationals who were sentenced to death for murder by a Malaysian court.**

341. The Special Rapporteur regrets that the Government of Malaysia has not replied to the present communication, thereby failing to cooperate with the mandate issued by the Human Rights Council in its resolution 25/13.

342. It has come to the attention of the Special Rapporteur that the Malaysian government executed Mr. Pitchaymuthu, Mr. J.R. Jayakumar, and Mr. S. Jayakumar on 25 March 2016. The Special Rapporteur strongly condemns the execution of the three Malaysian nationals and concludes that the Government of Malaysia, in executing them by hanging with very little notice to their family members, has violated their right to be free from torture or cruel, inhuman or degrading treatment, as provided by articles 1, 2, and 16 of the Convention against Torture (CAT) and article 7 of the International Convention on Civil and Political Rights (ICCPR).

343. As observed by the Special Rapporteur in his 2012-report to the General Assembly (A/67/279), there is evidence of an evolving standard within international bodies and a robust state practice to frame the debate about the legality of the death penalty within the context of the fundamental concepts of human dignity and the prohibition of torture and other cruel, inhuman or degrading treatment. This evolving standard, along with the resulting illegality of the death penalty under such prohibition, is developing into a norm of customary law, if it has not already done so (para. 74). Even if this customary norm is still underway, the Special Rapporteur considers that most conditions under which capital punishment is actually applied render the punishment tantamount to torture and that under many other, less severe conditions, it still amounts to cruel, inhuman and degrading treatment (para. 75).

344. The Special Rapporteur calls upon all states to reconsider whether the use of the death penalty per se respects the inherent dignity of the human person, causes severe mental and physical pain or suffering and constitutes a violation of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment (para. 79). Furthermore, as stated in his 2012 report (A/67/279), the Special Rapporteur calls upon the Government of Malaysia to observe rigorously the restrictions and conditions imposed by article 7 of the ICCPR and article 1 or 16 of the CAT. He calls upon retentionist states, inter alia, to ensure that the method of execution employed causes the least possible physical and mental suffering and that it does not violate the prohibition on torture and cruel, inhuman or degrading treatment (para. 80(b)) and to end the practice of carrying out executions with little or no prior warning given to condemned prisoners and their families (para. 80(c)).

345. The Special Rapporteur strongly urges the Government of Malaysia to refrain from carrying out death sentences and abolish the practice of executions.

Maldives

JUA 30/06/2016 Case No. MDV 2/2016 State Reply: None to Date **Allegations of the risk of imminent execution of Mr. Hussain Humaam Ahmed following judicial procedures that did not meet international standards on fair trial and due process of law.**

346. The Special Rapporteur regrets that the Government of the Maldives has not replied to the present communication, thereby failing to cooperate with the mandate issued by the Human Rights Council in its resolution 25/13.

347. In the absence of information to the contrary, the Special Rapporteur concludes that there is substance in the allegations presented in the initial communication, available via the link above, and is therefore of the view that the Government of the Maldives, by failing to protect the physical and psychological integrity of Mr. Ahmed, including by extracting a confession under duress, subjecting him to prolonged solitary confinement, denying him a psychological evaluation, and sentencing him to death following judicial procedures that did not meet international standards on fair trial and due process, has violated his right to be free from torture or cruel or degrading treatment as provided by Article 1, 2, 12, 15 and 16 of the Convention against Torture (CAT).

348. With regards to the allegations of prolonged solitary confinement, the Special Rapporteur draws attention to his interim report to the General Assembly of 5 August 2011 (A/66/268) where he defined solitary confinement, in accordance with the Istanbul Statement on the Use and Effects of Solitary Confinement, as the physical and social isolation of individuals who are confined in their cells for 22 to 24 hours a day. He observed that while solitary confinement for short periods of time may be justified under certain circumstances when adequate and effective safeguards are in place, the use of prolonged (in excess of 15 days) or indefinite solitary confinement causes severe mental and physical pain or suffering. The Special Rapporteur further recalls paragraph 28 of the General Assembly resolution 68/156, stating that prolonged or indefinite solitary confinement runs afoul of the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment. Furthermore, due to the prisoner's lack of communication, as well as the lack of witnesses inside the prison, solitary confinement may also give rise to other acts of torture or ill-treatment.

349. As observed by the Special Rapporteur in his 2012 report to the General Assembly (A/67/279), there is evidence of an evolving standard within international bodies and a robust State practice to frame the debate about the legality of the death penalty within the context of the fundamental concepts of human dignity and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. This evolving standard, along with the resulting illegality of the death penalty under such prohibition, is developing into a norm of customary law, if it has not already done so (para. 74). Even if this customary norm is still under way, the Special Rapporteur considers that most conditions under which capital punishment is actually applied render the punishment tantamount to torture and that under many other, less severe conditions, it still amounts to cruel, inhuman or degrading treatment (para. 75). Moreover, the Rapporteur emphasizes that "the expression 'most serious crimes' must be read restrictively to mean that the death penalty should be a quite exceptional measure" (CCPR General Comment 6, 1982) and that they are defined as "cases where it can be shown that there was an intention to kill, which resulted in loss of life" (A/HRC/4/20, paras. 39-53 and 65).

350. The Special Rapporteur calls upon all States to reconsider whether the use of the death penalty per se respects the inherent dignity of the human person, causes severe mental and physical pain or suffering and constitutes a violation of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment (para. 79 A/67/279). Furthermore, as stated in his 2012 report (A/67/279), the Special Rapporteur calls upon the Government of the Maldives to observe rigorously the restrictions and conditions imposed by ICCPR and CAT. The Special Rapporteur strongly urges the Government to refrain from carrying out death sentences and abolish the practice of executions altogether.

351. The Special Rapporteur further urges the State to comply with its obligation, under international customary law, to investigate, prosecute and punish all acts of torture and other cruel, inhuman or degrading treatment or punishment, as codified, inter alia, in the Convention against Torture (CAT).

Mauritania

JUA 02/08/2016 Case No. MRT 1/2016 State Reply: None to date **Allegations concernant l'arrestation et la détention arbitraires et aux allégations de torture et de mauvais traitements de treize personnes dont M. Amadou Tidjane Diop, M. Balla Touré, M. Hamady Lehbouss, M. Ahmed Hamdy Amarvall, M. Khatri Rahel M'Bareck, M. Mohamed Daty, M. Jemal Beylil, M. Ousmane Anne, M. Ousmane Lô, M. Abdallahi Matallah Saleck, M. Moussa Biram, M. Abdallahi Abou Diop et M. Mohamed Jaroullah, ainsi que 10 autres personnes sans affiliation connue à une quelconque organisation et arrêtées dans le même contexte.**

352. Le Rapporteur spécial regrette que le gouvernement de la Mauritanie n'ait pas répondu à la présente communication, échouant ainsi à coopérer avec le mandat émis par le Conseil des droits de l'homme dans sa résolution 25/13, ainsi qu'à se conformer à son obligation, en vertu du droit international coutumier, d'enquêter, poursuivre, et punir tout acte de torture et autres peines ou traitements cruels, inhumains ou dégradants, comme codifié, entre autre, dans la Convention contre la torture et autres peines ou traitements cruels, inhumains ou dégradants.

353. En l'absence d'information prouvant le contraire, le Rapporteur conclut qu'il y a de la substance quant aux allégations présentées dans la communication initiale, réitérées ci-dessus, et donc, que le gouvernement de la Mauritanie a violé les droits des cettes vingt-trois personnes de ne pas être soumis à la torture ou autres peines ou traitements cruels, inhumains ou dégradants, comme prévu dans les articles 1 et 16 de la Convention contre la torture.

354. Le Rapporteur spécial demande au gouvernement à enquêter tous les cas de torture, à poursuivre et punir les responsables, en fournissant une réparation intégrale pour les victimes, y compris une indemnisation équitable et adéquate, et d'empêcher la réitération de telles pratiques.

Mexico

JOL Case No. MEX 1/2016 State Reply: None to date **Dirección Relacionada con la adopción de la Ley General en materia de tortura y otros malos tratos y de la Ley Nacional de Ejecución Penal.**

355. El Relator Especial lamenta que el Gobierno de México no haya respondido a la comunicación de fecha 24 de marzo de 2016 acerca de la adopción de la Ley General en materia de tortura y de la Ley Nacional de Ejecución Penal, y por ello, considera que existe una falta de cooperación con el mandato conferido por el Consejo de Derechos Humanos en su resolución 25/13.

356. No obstante, el Relator Especial ha tenido conocimiento en la elaboración de este informe que la Ley Nacional de Ejecución Penal fue aprobada por el Congreso y fue publicada en el Diario Oficial de la Federación el 16 de junio de 2016. En consecuencia, el Relator Especial acoge con beneplácito la adopción de esta Ley y el hecho de que esta establece normas concretas orientadas a facilitar a los organismos de protección a los derechos humanos, tanto públicos como privados, y al Mecanismo Nacional para la Prevención de la Tortura, el acceso irrestricto a los Centros Penitenciarios, sin aviso previo, a la vez que prohíbe cualquier represalia hacia las personas privadas de libertad que acudan ante dichas instituciones. Asimismo, el Relator Especial celebra el establecimiento en esta Ley de una acción de control judicial destinada a resolver controversias sobre las condiciones de internamiento, entre otros asuntos.

357. En relación con la Ley General en materia de tortura, la comunicación expresaba algunos aspectos específicos que deberían ser tomados en consideración durante la discusión legislativa de la Ley General en materia de tortura y otros malos tratos. En particular, la comunicación se refería a la correcta tipificación de la tortura, la observancia del Protocolo de Estambul, el fortalecimiento del Mecanismo Nacional de Prevención y el establecimiento en la ley de la regla de exclusión de prueba obtenida a través de tortura u otros tratos crueles, inhumanos o degradantes.

358. Al respecto, el Relator Especial recuerda al Estado que la regla de exclusión "forma parte o se deriva de la prohibición general y absoluta de la tortura y otros malos tratos [...] y, como tal, no es derogable en ninguna circunstancia y se aplicará a los Estados que no son partes en la Convención (A/HRC/25/60). La prohibición se considera una norma del derecho internacional consuetudinario que emana de la naturaleza absoluta de la prohibición de la tortura. Su objetivo es desalentar y desincentivar la tortura no admitiendo pruebas "contaminadas" y prever juicios imparciales" (A/70/303, para. 52). La regla de exclusión, a la vez, es manifestación concreta del deber del Estado de prevenir la tortura, y por lo mismo debe interpretarse y aplicarse en forma amplia y no restrictiva. Ello implica que no debe imponerse la carga de la prueba a quien afirma haber sido torturado, sino que corresponde al Ministerio Público Fiscal demostrar que la prueba de la que pretende valerse se ha obtenido sin coerción de ningún tipo.

359. En consecuencia, con respecto a la Ley General en materia de tortura, el Relator Especial reitera al Gobierno las recomendaciones contenidas en la comunicación de fecha 24 de marzo de 2016 y hace un llamado a tener en cuenta la observancia de los estándares internacionales en cuanto a tortura y tratos crueles, inhumanos o degradantes a la hora de promulgar esta normativa.

XII. 04/06/2016 Case No. MEX 4/2016 State Reply: None to date Alegaciones relativas a la reforma constitucional del Estado de Veracruz, México que establece el derecho a la vida del ser humano desde el momento de la concepción y hasta la muerte natural.

360. El Relator Especial lamenta que el Gobierno de México no haya respondido a la comunicación, de fecha 4 de mayo de 2016, y por ello, considera que existe una falta de cooperación con el mandato realizado por el Consejo de Derechos Humanos en su resolución 25/13. Además, el Relator expresa su preocupación por haber descubierto que, mientras que su comunicación estaba ante el Gobierno Mexicano, el Congreso

estatal de Veracruz ha promulgado la reforma constitucional que es objeto de esta observación.

361. Ante la ausencia de información que contradiga lo argumentado, el Relator especial concluye que hay fundamentos suficientes en los argumentos presentados, disponibles en el enlace señalado anteriormente, para señalar que el Gobierno de México, por haber permitido al Estado de Veracruz modificar el artículo 4° de la Constitución del Estado estableciendo que "el Estado garantizará el derecho a la vida del ser humano" desde el momento de la concepción y hasta la muerte natural, ha violado sus obligaciones de proteger la integridad física y psicológica de las mujeres y adolescentes embarazadas, y ha violado respecto de ellas la prohibición del trato cruel, inhumano o degradante contenida en el artículo 16 de la Convención.

362. El Relator Especial quisiera recordarle al Estado que, en su informe temático de 2016, reiteró que "estas políticas restrictivas tienen unas repercusiones desproporcionadas en las mujeres y niñas marginadas y desfavorecidas. La existencia de leyes muy restrictivas, que prohíben los abortos incluso en casos de incesto, violación, deficiencia fetal o cuando está en riesgo la vida o la salud de la madre, vulneran el derecho de las mujeres a no ser sometidas a tortura o malos tratos." (A/HRC/31/57, para. 43) Asimismo, el Relator destaca que "estas políticas restringen el acceso a la interrupción voluntaria del embarazo provocando muertes innecesarias de mujeres." (A/HRC/31/57, para. 43; CAT/C/PER/CO/4).

363. En consecuencia, el Relator Especial exhorta al Estado a adecuar su legislación interna para resguardar el derecho de las mujeres a no ser sometidas a tratos crueles, inhumanos o degradantes, de conformidad con las obligaciones que emanan de los artículos 1 y 2 en relación con el artículo 16 de la Convención.

JAL 01/07/16 Case No. MEX 5/2016 State Reply: None to date **Alegatos de actos de tortura, detención arbitraria y violaciones a los derechos de pueblos indígenas en las personas de ciudadanos mexicanos indígenas y migrantes.**

364. El Relator Especial lamenta que, hasta la fecha, el Gobierno de México no haya respondido a la presente comunicación, y por ello, considera que no ha cumplido con su deber de cooperar con el mandato establecido por el Consejo de Derechos Humanos en la resolución 25/13.

365. Asimismo, el Relator Especial considera que el Gobierno no ha cumplido con la obligación emanada de la norma consuetudinaria internacional de investigar, *juzgar* y sancionar todos los actos de tortura y los tratos crueles, inhumanos o degradantes, como establece, *inter alia*, la Convención contra la Tortura (CAT).

366. Ante la falta de información que indique lo contrario, el Relator concluye que el Gobierno de México, al privar de libertad a tres migrantes indígenas mexicanos, torturar a uno de ellos y amenazarlos de ser deportados a Guatemala, país que ninguna de las personas detenidas conociera, es responsable por sus sufrimientos físicos y mentales y ha violado sus derechos a no ser sometidos a tratos crueles, inhumanos o degradantes como afirman los artículos 1, 2, 14 y 16 del CAT.

JAL 15/08/2016 Case No. MEX 6/2016 State Reply: None to date **Alegaciones sobre violaciones graves de los derechos humanos en el contexto de manifestaciones en Oaxaca, en particular los derechos a la vida, a no ser arbitrariamente detenido, a reunirse pacíficamente, a expresarse y asociarse libremente.**

367. El Relator Especial lamenta que, hasta la fecha, el Gobierno de México no haya respondido a la presente comunicación, y por ello, considera que no ha cumplido con su

deber de cooperar con el mandato establecido por el Consejo de Derechos Humanos en la resolución 25/13.

368. Asimismo, el Relator Especial considera que el Gobierno no ha cumplido con la obligación emanada de la norma consuetudinaria internacional de *investigar, juzgar* y sancionar todos los actos de tortura y los tratos crueles, inhumanos o degradantes, como establece, *inter alia*, la Convención contra la Tortura (CAT).

369. Ante la falta de información que indique lo contrario, el Relator concluye que el Gobierno de México, al arbitrariamente detener a varios líderes de la CNTE y torturar a algunos detenidos es responsable por sus sufrimiento físicos y mentales. Asimismo, el Gobierno de Mexico es responsable de la muerte de Elidio Ramos *Zárate* y Salvador Olmos García y ha violado sus derechos a no ser sometidos a tratos crueles, inhumanos o degradantes conforme a los artículos 7, 12 y 14 del CAT.

Mozambique

JAL 05/08/2016 Case No. MOZ 1/2016. State Reply: None to date. **Allegations concerning a consistent pattern of ill-treatment, torture, and deliberate killings of civilians by security forces during operations against the Mozambique National Resistance (RENAMO) across Sofala, Tete, Manica, and Zambezia provinces between February and June 2016, and the unearthing of a suspected mass grave near Gorongosa, where the bodies of 100-120 children, men and women might be buried.**

370. The Special Rapporteur regrets that the Government of Mozambique has not replied to the present communication, thereby failing to cooperate with the mandate issued by the Human Rights Council in its resolution 25/13.

371. In the absence of information to the contrary, the Special Rapporteur concludes that there is substance in the allegations presented in the initial communication, available via the link above, and is therefore of the view that the Government of Mozambique, by engaging in a consistent pattern of torture, ill-treatment, and deliberate killings of civilian men, women, and children during operations against the Mozambique National Resistance (RENAMO) across Sofala, Tete, Manica, and Zambezia provinces between February and June 2016, and by preventing access to mass graves and to areas with casualties during possible clean-up operations, has violated the victims' rights to be free from torture or cruel or degrading treatment as provided by Article 1, 2 and 16 of the Convention against Torture (CAT), and has failed to comply with its obligation, under international customary law, to investigate, prosecute and punish all acts of torture and other cruel, inhuman or degrading treatment or punishment, as codified, inter alia, in the CAT.

372. The State is urged to conduct a fair and impartial and independent investigation into the incidents, to hold those responsible accountable, and to provide victims or their families with adequate compensation, in accordance with articles 12 and 14 of the CAT.

Nauru

JUA 01/06/2016 Case No. NRU 1/2016 State Reply: None to date. **Allegations concerning the solitary confinement, indefinite family separation, inadequate medical care, and detrimental living conditions of migrant detainees, including Mr.**

Milad Zomar Sagher, Ms. Narges Alizadeh, Mr. Daryoush Alizadeh, Mr. Jabar Hamdavi and Mr. Musa Hamdavi.

173. The Special Rapporteur regrets that the Government of Nauru has not replied to the present communication, thereby failing to cooperate with the mandate issued by the Human Rights Council in its resolution 25/13.

174. In the absence of information to the contrary, the Special Rapporteur concludes that there is substance in the allegations presented in the initial communication, available via the link above, and is therefore of the view that the Government of Nauru, by failing to provide adequate medical treatment and subjecting migrant detainees to prolonged isolation and separation from their families, and failing to protect the physical and psychological integrity causing some asylum seekers to attempt suicide, has violated the rights of its irant detainees, including Mr. Milad Zomar Sagher, Ms. Narges Alizadeh, Mr. Daryoush Alizadeh, Mr. Jabar Hamdavi and Mr. Musa Hamdavi to be free from torture or cruel, inhuman or degrading treatment, as provided by articles 1, 2, and 16 of the Convention against Torture (CAT).

175. In his interim report to the General Assembly of 5 August 2011 (A/66/268), the Special Rapporteur defined solitary confinement, in accordance with the Istanbul Statement on the Use and Effects of Solitary Confinement, as the physical and social isolation of individuals who are confined in their cells for 22 to 24 hours a day. He observed that while solitary confinement for short periods of time may be justified under certain circumstances, with adequate and effective safeguards in place, the use of prolonged (in excess of 15 days) or indefinite solitary confinement may never constitute a legitimate instrument of the State, as it causes severe mental and physical pain or suffering, a point which has been reiterated in paragraph 28 of the General Assembly resolution 68/156: prolonged or indefinite solitary confinement runs afoul of the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment.

176. The Special Rapporteur draws the attention of the Government to the U.N. Standard Minimum Rules for the Treatment of Prisoners ("Mandela Rules") and, in particular, Rule 27(1), which provides that "[a]ll prisons shall ensure prompt access to medical attention in urgent cases. Prisoners who require specialized treatment or surgery shall be transferred to specialized institutions or to civil hospitals. Where a prison service has its own hospital facilities, they shall be adequately staffed and equipped to provide prisoners referred to them with appropriate treatment and care."

177. The Special Rapporteur urges the Government of Nauru to fulfil its obligations under the CAT and protect the physical and psychological integrity of asylum seekers in detention, to provide adequate redress to the victims and undertake effective measures to prevent the recurrence of these acts. The Special Rapporteur further calls upon the State to comply with the standards set out in the Mandela Rules as concerns the prohibition of prolonged or indefinite solitary confinement and the medical treatment provided the prisoners.

Pakistan

JUA 01/02/2016 Case No. PAK 1/2016 State Reply: None to date **Allegations concerning the imminent execution of Mr. Abdul Basit, who is affected with a severe physical disability.**

178. The Special Rapporteur regrets that the Government of Pakistan has not replied to the present communication, thereby failing to cooperate with the mandate issued by the Human Rights Council in its resolution 25/13.

179. In the absence of information to the contrary, the Special Rapporteur concludes that there is substance in the allegations presented in the initial communication, available via the link above, and therefore that the Government of Pakistan, by sentencing Mr. Basit to death by hanging, in spite of his physical disability, has violated his right to be free from torture or cruel, inhuman or degrading treatment, as provided by articles 1, 2, and 16 of the Convention against Torture (CAT) and article 7 of the International Covenant on Civil and Political Rights (ICCPR).

180. As observed by the Special Rapporteur in his 2012-report to the General Assembly (A/67/279), there is evidence of an evolving standard within international bodies and a robust State practice to frame the debate about the legality of the death penalty within the context of the fundamental concepts of human dignity and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. This evolving standard, along with the resulting illegality of the death penalty under such prohibition, is developing into a norm of customary law, if it has not already done so (para. 74). The Special Rapporteur calls upon all States to reconsider whether the use of the death penalty *per se* respects the inherent dignity of the human person, causes severe mental and physical pain or suffering and constitutes a violation of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment (para. 79). Furthermore, he calls upon retentionist States to ensure that the method of execution employed causes the least possible physical and mental suffering and that it does not violate the prohibition of torture and cruel, inhuman or degrading treatment; establish that there are no more humane alternatives available; and justify the use of a particular method of execution (para. 80 (c)).

181. In addition, the Special Rapporteur is of the view that the imposition of capital punishment on a defendant who is disabled violates a customary international law norm under all circumstances.

182. The Special Rapporteur strongly urges the Government of Pakistan to refrain from carrying out the death sentence against Mr. Basit and to refrain from and abolish the practice of executions in the future.

Peru

183. 01/06/2016 Case No. PER 3/2016 State Reply: None to date **Alegatos de que el proyecto de código penal presentado al Congreso el 19 de mayo pasado no estaría en conformidad con las leyes y normas internacionales de derechos humanos.**

184. El Relator Especial lamenta que, hasta la fecha, el Gobierno de Perú no haya respondido a la presente comunicación, y por ello, considera que no ha cumplido con su deber de cooperar con el mandato establecido por el Consejo de Derechos Humanos en la resolución 25/13. Asimismo, el Relator Especial considera que el Gobierno no ha cumplido con su obligación de proteger y hacer realidad el derecho de las mujeres a la salud, incluida la salud sexual y reproductiva.

185. Ante la falta de información que indique lo contrario el Relator concluye que el Gobierno del Perú esta en riesgo de violar la Convención Contra la Tortura (CAT). El proyecto de código penal presentado al Congreso el 19 de mayo pasado mantiene la criminalización de la interrupción voluntaria del embarazo a consecuencia de una

violación, inseminación artificial no consentida y cuando se presenta una malformación fetal severa. Se expresa profunda preocupación de que este proyecto de legislación pueda contribuir a perpetuar o incrementar abortos inseguros en el país, que afectan en particular a mujeres en situación de pobreza, contraviniendo la obligación del Estado, en virtud del derecho internacional de los derechos humanos, de proteger y hacer realidad el derecho de las mujeres a la salud, incluida la salud sexual y reproductiva.

Philippines

JAL 24/05/2016 Case No. PHL 1/2016 State Reply: None to date **Allegations of use of excessive force against protesters in Kidapawan City, North Cotabato resulting in the death of two persons and injuries to 40 protesters.**

385. The Special Rapporteur regrets that the Government of the Philippines has not replied to the present communication, thereby failing to cooperate with the mandate issued by the Human Rights Council in its resolution 25/13.

386. In the absence of information to the contrary, the Special Rapporteur concludes that there is substance to the allegations presented in the initial communication, available via the link above, and thus that the Government of Philippines, by failing to prevent the use of excessive force – including firearms – against protesters; the extrajudicial killings of two persons; and the injury of 40 protesters, has violated their right to be free from torture or cruel, inhuman or degrading treatment under article 7 of the International Covenant on Civil and Political Rights (ICCPR) and Articles 1, 2, and 16 of the Convention against Torture (CAT).

387. The Special Rapporteur strongly urges the Government of the Philippines to prevent the excessive use of force against peaceful protestors. The Special Rapporteur further urges the Government to comply with its obligation to investigate, prosecute and punish all acts of torture and other cruel, inhuman or degrading treatment or punishment, as codified, inter alia, in the CAT.

Poland

JOL 02/05/2016 Case No. POL 1/2016 State Reply: 30/06/2016 **Allegations concerning a draft law that would prohibit and criminalize termination of pregnancy under any circumstances.**

388. The Special Rapporteur thanks the Government of the Republic of Poland for its reply, available via the link above and dated 30 June 2016, to the present communication.

389. Since the date of the Government's reply, it has come to the Special Rapporteur's attention that the governing party in Poland has decided not to go forward with the law in question. The Special Rapporteur welcomes this decision by the Government of the Republic of Poland, thereby ensuring the State's compliance with articles 1, 2 and 16 of the Convention against Torture (CAT).

390. The Special Rapporteur urges the Republic of Poland to refrain from implementing any future legislation that would prohibit and criminalize the termination of pregnancy under any circumstances. The Special Rapporteur would like to remind the State that "highly restrictive abortion laws that prohibit abortions even in cases of incest, rape or fetal impairment or to safeguard the life or health of the woman violate women's right

to be free from torture and ill-treatment" (A/HRC/22/53, CEDAW/C/OP.8/PHL/1). The Special Rapporteur recommends that all states decriminalize abortion and ensure access to legal and safe abortions, at a minimum in cases of rape, incest and severe or fatal fetal impairment and where the life or physical or mental health of the mother is at risk (A/HRC/31/57).

391. The Special Rapporteur further offers his assistance and guidance in these matters in order to ensure any proposed legislation complies fully with the Republic of Poland's obligations under the CAT and customary international law.

Saudi Arabia

JUA 30/09/15 Case No. SAU 5/2015 State Reply: 04/05/2016 **Allegations concerning the imminent execution of Mr. Husain Abu al Khair, a Jordanian national sentenced to death for drug trafficking by a Saudi court**

392. The Special Rapporteur thanks the Government of Saudi Arabia for its reply, dated 4 May 2016, to the present communication.

393. He regrets that, as of the drafting of this report, no official translation is available to the Government's reply of 4 May 2016.

394. The Rapporteur will make his views on the case known later on, after being able to read an English version of the reply.

JUA 30/11/2015 Case No. SAU 10/2015 State Reply: 04/03/2016 **Allegations of the death sentence issued against Mr. Ashraf Fayadh on November 2015 after an allegedly unfair trial**

395. The Special Rapporteur thanks the Government of Saudi Arabia for its reply, dated 4 March 2016, to the present communication.

396. He regrets that, as of the drafting of this report, no official translation is available to the Government's reply of 4 March 2016.

397. The Rapporteur will make his views on the case known later on, after being able to read an English version of the reply.

JOL 11/12/2015 Case No. SAU 11/2015 State Reply: None to date **Allegations concerning the public flogging and risk of future public flogging of Mr. Raef Badawi and Mr. Miklif bin Daham al Shammari.**

398. The Special Rapporteur regrets that the Government of Saudi Arabia has not replied to the present communication, thereby failing to cooperate with the mandate issued by the Human Rights Council in its resolution 25/13.

399. In the absence of information to the contrary, the Special Rapporteur concludes that there is substance in the allegations presented in the initial communication, available via the link above, and is therefore of the view that the Government of Saudi Arabia, by imposing the sentence of public flogging to Mr. Badawi and Mr. Al Shammari, and by carrying out Mr. Badawi's corporal punishment, has violated the right of these two individuals to be free from torture or cruel, inhuman or degrading treatment or punishment, as provided by articles 1, 2, and 16 of the Convention against Torture (CAT).

400. It has come to the attention of the Special Rapporteur that, as of the drafting of this report, the further execution of Mr. Badawi's sentence of public flogging has been

postponed, though Mr. Badawi and Mr. Al Shammari remain in detention and face the threat of the future implementation of this sentence at any time. The Special Rapporteur wishes to stress that, as noted in his prior thematic reports issued, "[w]ithout exception, corporal punishment has a degrading and humiliating component. All forms of corporal punishment must[,] therefore, be considered as amounting to cruel, inhuman or degrading punishment in violation of international treaty and customary law." (A/HRC/13/39/Add.5, para. 209).

401. The Special Rapporteur strongly urges the Government of Saudi Arabia to refrain from and abolish the practice of flogging and of executions, and comply with its international legal obligation under the CAT.

JUA 24/12/2015 Case No. SAU 12/2015 State Reply: None to date **Allegations of refusal of the Saudi authorities to hand over the body of Mr. Ali Agirday over to his family, after his secret execution.**

402. The Special Rapporteur regrets that the Government of Saudi Arabia has not replied to the present communication, thereby failing to cooperate with the mandate issued by the Human Rights Council in its resolution 25/13.

403. In the absence of information to the contrary, the Special Rapporteur concludes that there is substance in the allegations presented in the initial communication, available via the link above, and thus that the Government of Saudi Arabia, by executing Mr. Agirday in complete secrecy, refusing to hand over his body for burial to his family, and failing to notify the family of the location of his body, has violated their right to be free from torture or cruel, inhuman or degrading treatment under the provisions of Article 7 of the International Covenant on Civil and Political Rights (ICCPR) and articles 1, 2, and 16 of the Convention Against Torture (CAT).

404. The Special Rapporteur would like to draw the Government's attention to a 2011 report of the Human Rights Committee (CCPR/C/106/D/2120/2011), which states that "the complete secrecy surrounding the date of the execution and the place of burial, as well as the refusal to hand over the body for burial" to "the executed prisoner's family, have the effect of intimidating or punishing the family by intentionally leaving it in a state of uncertainty and mental distress," and that "the State party's subsequent persistent failure to notify" the family of the location of the victim's body "may amount to inhuman treatment" of the family, in violation of article 7 of the ICCPR (para 11.10), and article 1, 2, and 16 of the CAT.

405. The Special Rapporteur strongly condemns the execution of Mr. Agirday and reminds the Government of Saudi Arabia to observe rigorously the restrictions and conditions imposed by Article 7 of the ICCPR, including by ending the practice of secret executions or executions with little or no prior warning given to condemned prisoners and their families (A/67/279, para. 80 (c)). In addition, the Special Rapporteur urges the Government of Saudi Arabia to hand-over the body of Mr. Agirday to his family, and to protect their right to be free from mental torture or cruel, inhuman or degrading treatment under articles 1 and 16 of the CAT.

406. The Special Rapporteur strongly urges the Government of Saudi Arabia to refrain from carrying out death sentences and to abolish the practice of executions, and to provide the victims with reparations in accordance with articles 12 and 14 of the CAT.

JUA 22/03/2016 Case No. SAU 2/2016 State Reply: 28/07/2016 **Allegations concerning the torture, use of solitary confinement and imminent risk of execution of three juvenile offenders, Mr. Ali Mouhammed al-Nimr, Mr. Dawoud al-Marhoon and Mr. Abdullah al-Zaher.**

407. The Special Rapporteur thanks the Government of Saudi Arabia for its reply, dated 28 July 2016, to the present communication.

408. However, the Special Rapporteur regrets that the Government has to date not submitted a substantive reply to the allegations contained therein, other than its initial request for an extension. The Special Rapporteur hence finds that the Government, in its reply, does not sufficiently address the concerns, legal obligations and questions raised in the initial communication, which prompts him to conclude that the Government fails to fully and expeditiously cooperate with the mandate issued by the Human Rights Council in its resolution 25/13.

409. In the absence of information to the contrary, the Special Rapporteur concludes that there is substance in the allegations presented in the initial communication, available via the link above, and is therefore of the view that the Government, by seeking to execute the death penalty of Mr. al-Zaher, Mr. al-Nir. and Mr. al-Marhoon for offenses that do not reach the threshold of "the most serious crimes" and that were committed while they were children, has violated their rights to be free from torture or cruel, inhuman or degrading treatment (other ill-treatment) under articles 1, 2, and 16 of the Convention against Torture (CAT). Additionally, by applying prolonged solitary confinement to Mr. al-Zaher, a juvenile offender, and further invoking statements made by him as a result of torture as evidence in his trial, has violated his right to be free from torture or other ill-treatment as well as the exclusionary rule under articles 1, 2, 15 and 16 of the CAT.

410. As observed by the Special Rapporteur in his 2012 report to the General Assembly (A/67/279), there is evidence of an evolving standard within international bodies and a robust State practice to frame the debate about the legality of the death penalty within the context of the fundamental concepts of human dignity and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. This evolving standard, along with the resulting illegality of the death penalty under such prohibition, is developing into a norm of customary law, if it has not already done so (para. 74). Even if this customary norm is still under way, the Special Rapporteur considers the most conditions under which capital punishment is actually applied renders the punishment tantamount to torture and that under many other, less severe conditions, it still amounts to cruel, inhuman or degrading treatment (para.75). The Special Rapporteur emphasizes that the execution of persons who committed their crimes while they were under 18 years of age is per se a violation of an existing norm of customary international law (para. 64). Furthermore, any judgment imposing the death sentence and execution of juvenile offenders amounts to cruel, inhuman and degrading punishment, which is prohibited inter alia in the CAT, and violate the Government's obligation under article 37(a) of the Convention on the Rights of the Child (CRC) to refrain from imposing the death penalty for offences committed by persons below 18 years of age.

411. Regarding the application of solitary confinement to Mr. al-Zaher in Al-Ha'ir prison, in his interim report to the General Assembly of 5 August 2011 (A/66/268), the Special Rapporteur defined solitary confinement, in accordance with the Istanbul Statement on the Use and Effects of Solitary Confinement, as the physical and social isolation of individuals who are confined in their cells for 22 to 24 hours a day. He observed that while solitary confinement for short periods of time may be justified under certain circumstances, with adequate and effective safeguards in place, the use of prolonged (in excess of 15 days) or indefinite solitary confinement may never constitute a legitimate instrument of the State, as it causes severe mental and physical pain or suffering, a point which has been reiterated in paragraph 28 of the General Assembly resolution 68/156: prolonged or indefinite solitary confinement runs afoul of the absolute prohibition of torture and other cruel, inhuman or degrading treatment or

punishment. Also, the Special Rapporteur recalls that when used on juveniles (A/66/268), solitary confinement amounts to cruel, inhuman or degrading treatment or punishment or even torture, even if not used indefinitely or for a prolonged period of time.

412. The Special Rapporteur calls upon all States to reconsider whether the use of the death penalty per se respects the inherent dignity of the human person as it causes severe mental and physical pain or suffering and constitutes a violation of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment; (para. 79 A/67/279). He reminds the government of Saudi Arabia that international law establishes the absolute and non-derogable prohibition of torture and other ill-treatment as codified in articles 1, 2 and 16 of the CAT as well as the prohibition of using evidence obtained under torture or ill-treatment, in accordance with article 15 of the CAT. With regard to sentences imposing the death penalty, the report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/67/279) calls upon retentionist States to rigorously observe the restrictions and conditions imposed by articles 1, 2 and 16 of the CAT.

413. The Special Rapporteur strongly urges the Government of Saudi Arabia to refrain from carrying out death sentences, particularly against defendants who were underage when they committed their crimes, and to abolish the practice of executions.

Serbia

JUA 04/03/2016 Case No. SRB 1/2016 State Reply: 26/05/2016 **Allegations concerning "push-backs" of migrants along the former Yugoslav Republic of Macedonia's southern border, in violation of the principle of non-refoulement.**

414. The Special Rapporteur thanks the Government of the Republic of Serbia for its reply, dated 26 May 2016, to the present communication.

415. The Special Rapporteur takes note of the information provided by the Government regarding the administration of humanitarian aid to migrants and plan to identify and support vulnerable persons, particularly unaccompanied minors. He welcomes the Government's assertion that it has not employed entry restrictions on its own border and has conducted individualized assessments of migrants within its borders. However, in spite of the information supplied by the Government, the reply fails to address the issue of collective expulsion of non-nationals at Macedonia's southern border, as a result of the "Joint Statement of Heads of Police Services," which effectively closed the sending stream of migrants to Serbia, and within the region. The Special Rapporteur, hence, finds that the Government, in its reply, does not sufficiently address the concerns, legal obligations, and questions raised in the initial communication, which prompts him to infer that the Government fails to fully and expeditiously cooperate with the mandate issued by the Human Rights Council in its resolution 25/13.

416. In the absence of information to the contrary, the Special Rapporteur concludes that there is substance in the allegations presented in the initial communication, available via the link above, and that the Government, by participating in, and being party to the Joint Statement, has not complied with its positive obligation to prohibit non-refoulement at Macedonia's southern border. By lending support to and participating in a policy that denies persons an opportunity to make a proper claim for protection, and facilitates their return to places where they may face persecution, torture or other cruel, inhuman or

degrading treatment or punishment, Serbia has violated its obligations under articles 1, 2, 3, and 16 of the Convention against Torture (CAT).

417.The Special Rapporteur would like to draw the Government's attention to his 2015 thematic report addressing the extraterritorial application of the prohibition of torture, which states that "the obligation to respect the human rights of all persons applies whenever States affect the rights of individuals abroad through their acts or omission" and that "the obligation to take measures to prevent acts of torture or other ill-treatment includes actions that a State takes in its own jurisdiction to prevent such acts in another jurisdiction." (A/70/303, para. 14, 38)

418.The Special Rapporteur strongly urges the Government of the Republic of Serbia to explicitly reject the Joint Statement and the principles and policies it espouses, as well as to take measures to ensure that its procedures and involvement at Macedonia's southern border is brought fully in line with its non-refoulement obligations under international law.

Sierra Leone

JAL 21/12/2015 Case No. SLE 3/2015 State Reply: None to date **Allegation concerning a governmental policy subjecting young women to degrading physical searches and forced pregnancy testing in order to attend school and sit for exams.**

419.The Special Rapporteur regrets that the Government of the Republic of Sierra Leone has not replied to the present communication, thereby failing to cooperate with the mandate issued by the Human Rights Council in its resolution 25/13.

420.In the absence of information to the contrary, the Special Rapporteur concludes that there is substance to the allegations presented in the initial communication, available via the link above, and is therefore of the view that the Government of the Republic of Sierra Leone, by implementing a policy of degrading physical searches of girls, forced pregnancy testing, and expulsion from school of pregnant girls, leading to irreparable harm on the girls' physical, psychological health and well-being, has violated their right to be free from cruel inhuman and degrading treatment, as codified in articles 2 and 16 of the Convention against Torture (CAT).

421.The Special Rapporteur would like to draw the GovernmententRapporteur concludes that there is substance to the allegations presented in the initial crohibit forced and coerced pregnancy tests and obtain full, free and informed consent for such tests, and prohibit virginity testing under all circumstances," recognizing that women and girls "are often exposed to severe pain and suffering and coerced into or subjected to unwanted, degrading and humiliating procedures and examinations. (A/HRC/31/57, paras. 70, 46)

422.The Special Rapporteur strongly urges the Government of the Republic of Sierra Leone to cease the implementation of any such policy since it may result in cruel, inhuman or degrading treatment that causes substantial and irreparable harm to the health and well-being of women and girls in conformity with its international legal obligations under the CAT.

JOL 27/01/2016 Case No. SLE 1/2016 State Reply: None to date **Allegations concerning the persistence of a total ban on abortion and delays in adopting the 2015 Safe Abortion Bill that discriminate against women and girls in Sierra Leone.**

423. The Special Rapporteur regrets that the Government of Sierra Leone has not replied to the present communication, thereby failing to cooperate with the mandate issued by the Human Rights Council in its resolution 25/13.

424. In the absence of information to the contrary, the Special Rapporteur concludes that there is substance in the allegations presented in the initial communication, available via the link above, and is therefore of the view that the Government of Sierra Leone, in delaying the adoption of the 2015 Safe Abortion Bill, has violated the right of women to be free from torture or cruel, inhuman or degrading treatment, as provided by articles 1, 2 and 16 of the Convention against Torture.

425. The Special Rapporteur reminds the Government that, as observed in his 2013 thematic report to the Human Rights Council (A/HRC/22/53), "international and regional human rights bodies have begun to recognize that abuse and mistreatment of women seeking reproductive health services can cause tremendous and lasting physical and emotional suffering, inflicted on the basis of gender" (para. 46). Moreover, the Committee against Torture has expressed concerns about restrictions on access to abortion as violating the prohibition of torture and ill-treatment (CAT/C/PER/CO/4, para. 23.).

426. It has come to the attention of the Special Rapporteur that, as of the drafting of this report, the President again refused to sign the Bill, after it was returned to him unaltered from Parliament, and instead referred the Bill to the Constitutional Review Committee, where it remains stalled. The Rapporteur strongly urges the Government of Sierra Leone to finalize the adoption of the 2015 Safe Abortion Bill, which would bring its legislation in line with international human rights law and standards.

Singapore

JUA 18/05/2016 Case No. SGP 3/2016 State Reply: 27/06/2016 **Allegations concerning the alleged scheduled execution of Mr. Kho Jabing, a 31-year-old Malaysian national for unintentional homicide.**

427. The Special Rapporteur thanks the Government of the Republic of Singapore for its reply, dated 27 June 2016, to the present communication.

428. The Special Rapporteur takes note of the information provided by the Government that Mr. Kho Jabing was sentenced to death by the High Court of Singapore and that he unsuccessfully appealed his sentence before the High Court and the Court of Appeal, and sought clemency from the President of the Republic of Singapore. However, the Rapporteur finds that the Government, in its reply, does not sufficiently address the concerns, legal obligations, and questions raised in the initial communication, which prompts him to conclude that the Government fails to fully and expeditiously cooperate with the mandate issued by the Human Rights Council in its resolution 25/13.

429. As observed by the Special Rapporteur in his 2012 report to the General Assembly (A/67/279), there is evidence of an evolving standard within international bodies and a robust State practice to frame the debate about the legality of the death penalty within the context of the fundamental concepts of human dignity and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. This evolving standard, along with the resulting illegality of the death penalty under such prohibition, is developing into a norm of customary law, if it has not already done so (para. 74). The Special Rapporteur calls upon all States to reconsider whether the use of the death penalty per se respects the inherent dignity of the human person, causes severe mental

and physical pain or suffering and constitutes a violation of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment (para. 79).

430.In addition, capital punishment in this case violates the international customary norm (codified in treaty law like Article 6.2 of the International Covenant on Civil and Political Rights) that the death penalty may only be applied to the "most serious cases," which the Human Rights Committee has defined those in which and intent to kill is proven and that actually result in death. In consequence, unintentional homicide does not qualify for the death penalty under international law.

431.It has come to the attention of the Special Rapporteur that, as of the drafting of this report, Mr. Jabing was executed on 20 May 2016. The Special Rapporteur strongly condemns the execution of Mr. Jabing and concludes that the Government of Republic of Singapore in executing him has violated his right to be free from torture or cruel, inhuman or degrading treatment, as provided by international customary law, codified, inter alia, in articles 1, 2 and 16 of Convention against Torture and article 7 of the International Covenant on Civil and Political Rights.

432.The Special Rapporteur strongly urges the Government of the Republic of Singapore to refrain from carrying out death sentences and abolish the practice of executions.

Slovenia

JUA 04/03/2016 Case No. SVN 1/2016 State Reply: 10/06/16 **Allegations concerning "push-backs" of migrants and asylum seekers along the former Yugoslav Republic of Macedonia's southern border, in violation of the principle of non- refoulement.**

433.The Special Rapporteur thanks the Government of Republic of Slovenia for its reply, dated 10 June 2016, to the present communication.

434.The Special Rapporteur acknowledges the account of the Government in response to the concerns, legal obligations, and questions raised in the initial communication. He welcomes the information provided by the Government according to which, the Government is no longer implementing the "Joint Statement of Heads of Police Services" and is instead following the European Council Conclusions on Migration (18 February 2016).

435.In the absence of information to the contrary, the Special Rapporteur concludes that there is substance in the allegations presented in the initial communication, available via the link above, and that the Government, by having participated in and been party to the Joint Statement, did not comply with its positive obligation to prevent non-refoulement at Macedonia's southern border. By lending support to and participating in a policy that denies persons an opportunity to make a proper claim for protection, and facilitates their return to places where they may face persecution, torture or other cruel, inhuman or degrading treatment or punishment, Slovenia violated its obligations under articles 1, 2, 3, and 16 of the Convention against Torture (CAT).

436.The Special Rapporteur would like to draw the Government's attention to his 2015 thematic report addressing the extraterritorial application of the prohibition of torture, where he states, "the obligation to respect the human rights of all persons applies whenever States affect the rights of individuals abroad through their acts or omission" and that "the obligation to take measures to prevent acts of torture or other ill-treatment

includes actions that a State takes in its own jurisdiction to prevent such acts in another jurisdiction." (A/70/303, para. 14, 38).

437. While welcoming the statement that Slovenia no longer implements the Joint Statement, the Special Rapporteur nevertheless strongly urges the Government of the Republic of Slovenia to explicitly reject the Joint Statement and the principles and policies it espouses, as well as to take measures to ensure that its procedures and involvement at Macedonia's southern border are brought fully in line with its non-refoulement obligations under international law.

Somalia

JUA 16/11/2015 Case No. OTH 9/2015 State Replies: 10/05/2016 and 16/06/2016 **Allegations of the imminent execution of Mr. Abdullahi Ali, a man with psychosocial disabilities, who is reportedly at risk of imminent execution in Somaliland.**

438. The Special Rapporteur thanks the Government of Somalia for its replies, dated 10 May 2016 and 16 June 2016, to the present communication.

439. The Rapporteur takes note of the information provided by the Government that the case is pending before full bench at the Supreme Court.

440. The Special Rapporteur however finds that the Government, in its reply, does not sufficiently address the concerns, legal obligations, and questions raised in the initial communication, which prompts him to conclude that the Government fails fully and expeditiously to cooperate with the mandate issued by the Human Rights Council in its resolution 25/13, as well as to comply with its obligation, under international customary law, to investigate, prosecute and punish all acts of torture and other cruel, inhuman or degrading treatment or punishment, as codified, *inter alia*, in the Convention against Torture (CAT).

441. In the absence of information to the contrary, the Special Rapporteur concludes that there is substance in the allegations presented in the initial communication, reiterated above, and thus, that the Government of Somalia and the authorities of Somaliland, by failing to protect the physical and psychological integrity and prevent the physical abuse of Mr. Ali, exclude evidence obtained under torture or ill-treatment, and take steps to prevent the execution of Mr. Ali, has acted in discordance with article 15 of the CAT, and violated his right to be free from torture and other cruel, inhuman or degrading treatment or punishment as provided by articles 1 and 16 of the CAT. The Special Rapporteur urges the State of Somalia to refrain from executing this person.

South Sudan

JUA 18/07/2016 Case No. SSD 2/2016 State Reply: None to Date **Allegations concerning the continued arbitrary detention, mistreatment in detention, and conviction following judicial procedures that did not meet international standards on fair trial and due process, of four Kenyan nationals since 29 May 2015.**

442. The Special Rapporteur regrets that the Government of South Sudan has not replied to the present communication, thereby failing to cooperate with the mandate issued by the Human Rights Council in its resolution 25/13.

443. In the absence of information to the contrary, the Special Rapporteur concludes that there is substance in the allegations presented in the initial communication, available via the link above, and is therefore of the view that the Government of South Sudan, by convicting Kenyan nationals, Messrs. Boniface Mutiuki Chuma, Ravi Ramesh Ghaghda, Anthony Kaya Muniafo, and Anthony Mwandime Wasome, to life imprisonment following judicial procedures that did not meet international standards on fair trial and due process, including by means of intimidating and threatening witnesses, preventing them from communicating with lawyers, and by depriving them access to food and water, has violated their rights to be free from torture or cruel or degrading treatment as provided by Article 1, 2 and 16 of the Convention against Torture (CAT).

444.he Special Rapporteur calls upon the Government of South Sudan to protect the human right of the aforementioned individuals to be free from torture or cruel, inhuman or degrading treatment, as well as to maintain proper and necessary conditions within detention facilities, including access to adequate nutrition and water, as codified, inter alia, in the CAT.

Spain

JUA 17/06/2015 Case No. [UP 7/2015](#) State Reply: [24/07/2016](#) **Alegaciones de actos de represalia contra el señor José Antúnez Becerra, por haber denunciado actos de tortura por parte de funcionarios del centro penitenciario de Quatre Camins; así como contra miembros del Observatorio del Sistema Penal y Derechos Humanos de la Universidad de Barcelona (OSPDH), y en particular su Director, el señor Iñaki Rivera Beiras, en la forma de obstrucción a su trabajo de supervisión. El Señor Antúnez Becerra se encontraría en el módulo 4 del centro penitenciario de Brians 2, y su estado de salud se habría deteriorado seriamente.**

445.El Relator Especial agradece al Gobierno de España por su respuesta, de fecha 24 de mayo del 2016, acusando recibo de la presente comunicación.

446.El Relator Especial aprecia el esfuerzo del Gobierno en responder detalladamente a las inquietudes, obligaciones y preguntas presentadas en la comunicación inicial sobre las alegaciones de actos de represalia contra el señor José Antunez Becerra.

447.El Relator toma nota de la información ofrecida por el Gobierno sobre las alegaciones de represalia contra el señor José Antunez Becerra, por haber denunciado actos de tortura por parte de funcionarios del centro penitenciario de Quatre Camins, así como contra miembros del Observatorio del Sistema Penal y Derechos Humanos de la Universidad de Barcelona (OSPDH), y en particular su Director, el señor Iñaki Rivera Beiras, en la forma de obstrucción a su trabajo de supervisión; sobre el aplazamiento del Programa Individual de Tratamiento y la huelga de hambre.

448.No obstante, el Relator Especial desea hacer referencia a los artículos 2, 13 y 16 de la Convención contra la Tortura y otros tratos o penas crueles, inhumanos o degradantes (CAT) y muestra grave preocupación por la integridad física y emocional, así como por el estado de salud del señor Antunez Becerra, al igual que, por las alegaciones de represalias contra el señor Rivera Beiras y otros miembros del OSPDH, así como por la presunta obstrucción de su trabajo de supervisión de la situación de derechos humanos en los centros de privación de libertad en Cataluña.

AL Case No. 07/01/2016 [UP 1/2016](#) State Reply: [14/03/2016](#) **Alegaciones sobre malos tratos que el Sr. Juan José Cañaveri Cañaveri habría recibido por parte de agentes policiales durante su estancia en un hospital.**

449.El Relator Especial agradece al Gobierno de España por su respuesta a la comunicación de fecha 7 de enero de 2016, la cual versaba sobre las alegaciones de malos tratos que el Sr. Joan José Gabarri Gabarri habría recibido por parte de Agentes de los Mossos d'Esquadra durante su estancia en el hospital de Santa Tecla de Tarragona y con posterioridad. No obstante, el Relator Especial considera que la respuesta del gobierno no abordó suficientemente las inquietudes, obligaciones y preguntas de la comunicación inicial y por ello, considera que existe una falta de cooperación con el mandato realizado por el Consejo de Derechos Humanos en su resolución 25/13.

450.Ante la ausencia de información que contradiga lo argumentado, el Relator Especial concluye que hay fundamentos suficientes en los argumentos presentados, disponibles en el enlace señalado anteriormente, para señalar que el Gobierno de España ha fallado en sus obligaciones de proteger la integridad física y psicológica del Sr. Gabarri. De la información aportada por el Gobierno, no es posible esclarecer si se dio la debida consideración a las alegaciones del Sr. Gabarri respecto a que los delitos que se le imputaban habrían sido cometidos en defensa a las presuntas agresiones que habría sufrido por parte de los agentes policiales. Asimismo, la información aportada por el Estado no permite concluir con claridad los periodos en que el Sr. Gabarri estuvo en régimen de aislamiento, especialmente durante junio o julio de 2015, así como tampoco si se utilizó el régimen de aislamiento como medida para ocultar los presuntos malos tratos a los que habría sido sometido. En consecuencia, el Relator Especial considera que los derechos de Sr. Gabarri han sido vulnerados, en particular en los artículos 1, 2, 16, y 12 de la Convención contra la Tortura (CCT).

451.El Relator Especial quisiera recordarle al Estado la prohibición absoluta e inderogable de la tortura y de los malos tratos establecida en la CCT. Por lo mismo, el Relator exhorta al Gobierno de España a emplear la debida diligencia para investigar las alegaciones de malos tratos que habría sufrido el Sr. Gabarri y, en caso que resulte procedente, enjuiciar y sancionar a los responsables, de conformidad con sus obligaciones bajo derecho internacional.

452. El Relator Especial quisiera recordarle al Estado [illegible] **el fallecimiento de la Sra. Rachida El Mahadi Ouaraga ocurrieron en circunstancias detalladas en sus cuerpos correspondientes.**

453.El Relator Especial agradece al Gobierno de España por su respuesta a la comunicación de fecha 7 de enero de 2016, la cual versaba sobre la muerte de la Sra. Rachida El Mahadi Ouaraga, ocurrida el día 11 de abril de 2015 en el Centro Penitenciario de Brians 2 en Cataluña.

454.El Relator Especial agradece el esfuerzo del Gobierno en responder detalladamente a las inquietudes, obligaciones y preguntas presentadas en la comunicación oficial y toma nota de la información proporcionada por el Gobierno de España respecto del funcionamiento del sistema penitenciario y la situación particular de la Sra. El Mahadi. Sin embargo, a pesar de esta respuesta, la misma carece de información suficiente sobre las alegaciones relativas a malos tratos y golpes que habría recibido la Sra. El Mahadi durante su estancia en el Departamento [illegible] de la Sra. El Mahadi a encontrarse en el régimen de aislamiento al momento de su muerte, a pesar de la gravedad de su estado de salud, la existencia previa [illegible] de una evaluación médica que [illegible] y el estado de la [illegible] en el momento de su muerte. Asimismo, el Relator Especial considera que la información [illegible] no abordó suficientemente las inquietudes y

observaciones expresadas en la comunicación inicial y por ello, considera que existe una falta cooperación con el mandato realizado por el Consejo de Derechos Humanos en su resolución 25/13.

614.Por lo tanto, ante la ausencia de información que contradiga lo argumentado, el Relator Especial concluye que hay fundamentos suficientes en los argumentos presentados, disponibles en el enlace web señalado anteriormente, para señalar que el Gobierno de España falló en sus obligaciones de proteger la integridad física y psicológica de Sra. El Mehadi y, por consecuencia ha vulnerado los derechos previstos en los artículos 1, 2, y 16 de la Convención contra la Tortura.

615. Al respecto, el Relator Especial quisiera recordarle al Estado que la reclusión en régimen de aislamiento se define como "el aislamiento físico y social de personas que permanecen encerradas en sus celdas entre 22 y 24 horas al día" y que este tendrá el carácter de prolongado si supera los 15 días de duración (A/66/268, para. 26). El régimen de aislamiento puede producir efectos psicológicos y fisiológicos con solo unos pocos días, y las investigaciones al respecto muestran que puede ocasionar "un síndrome que se ha denominado 'psicosis de prisión'. Los síntomas pueden incluir ansiedad, depresión, ira, trastornos cognitivos, distorsiones de la percepción, paranoia y psicosis y lesiones autoinfligidas" (A/66/268, para. 62). Las personas que sufren algún tipo de discapacidad o problema de salud mental son especialmente vulnerables a los efectos del régimen de aislamiento, pues ellas "se deterioran rápidamente en un régimen de aislamiento. Los efectos negativos del régimen de aislamiento son especialmente importantes para las personas que padecen graves problemas de salud mental, que habitualmente se caracterizan por síntomas psicóticos y/o importantes empobrecimientos funcionales. Algunos cometen actos extremos, como infligirse lesiones a sí mismos o incluso el suicidio" (A/66/268, para. 68).

616.El Relator Especial solicita al Gobierno de España a asegurar la investigación de los hechos que llevaron a la muerte de la Sra. El Mehadi y, en caso que sea procedente, procesar y sancionar a los culpables. Asimismo, el Relator Especial recuerda al Estado la obligación de que las víctimas de la tortura y de otros tratos o penas crueles, inhumanos o degradantes obtengan reparación y reciban una indemnización justa y adecuada.

El 6 de [illegible] de 2016 [illegible] Sra. [illegible] [illegible] y [illegible] **Allegations de torture, mauvais traitements et décès suite à des mauvais procédés à l'encontre de personnes placées en détention**

617.El Relator Especial agradece al Gobierno de España por su respuesta a la comunicación de fecha 11 de julio de 2016, la cual versaba sobre las condiciones de detención y el estado del proceso de extradición del Sr. Rubén Vaglieri.

618.El Relator Especial quisiera el volver del Gobierno su especial agradecimiento a la importante información proporcionada por el Gobierno de España respecto del funcionamiento del sistema penitenciario español, especialmente el régimen de los presos condenados a la expiación de los delitos más graves, así como el régimen de aislamiento y el régimen de vida de los presos. El Estado señala en la información proporcionada que el Gobierno de España respeta los procedimientos establecidos en la Ley Orgánica General Penitenciaria y el Reglamento Penitenciario y la supervisión de los jueces de vigilancia penitenciaria. Asimismo, el Estado señala en la información enviada que el trabajo y el uso de los espacios comunes de los presos en régimen de aislamiento son iguales que para el resto de los presos. Sin embargo, el Estado señala que el régimen de aislamiento se aplica a los presos que cometen faltas graves contra la disciplina penitenciaria y que el régimen de aislamiento no puede exceder de 14 días.

619. Aun así, la información que recibió el Relator Especial no contradice la información que fue [illegible] [illegible] [illegible]

a sus obligaciones de proteger la integridad física y psicológica del Sr. Tadjzer por haber permitido que el tribunal enfrente el riesgo de ser extraditado a un país donde estará bajo riesgo grave de tortura u otros tratos crueles, inhumanos o degradantes en violación de los artículos 1, 16 y 3 de la Convención Contra la Tortura (CCT).

44. Como fue resaltado en el informe del Relator Especial ante la Asamblea General "El principio de no devolución es inherente al carácter absoluto e imperativo de la prohibición de la tortura y otras formas de malos tratos" (A/59/324, párrafo 20). Asimismo, el Relator Especial afirma que la norma de no devolución de la CAT, que es también una norma consuetudinaria del derecho internacional, es más protectora y estricta que la norma de no devolución de la Convención sobre el Estatuto de los Refugiados de 1951.

45. El Relator Especial hace un llamado al Gobierno de España para proteger el derecho del Sr. Tadjzer a estar libre de tortura o de otros tratos crueles inhumanos o degradantes, previsto en el derecho internacional. Además, el Relator exhorta al Gobierno de España a dar a conocer el estado en el cual se encuentra el proceso de extradición y a resolver el presente asunto con la celeridad que este caso significa, máxime considerando que el Sr. Tadjzer se encuentra privado de su libertad.

Position

[illegible] **[illegible]**

46. The Special Rapporteur regrets that the Government of Sudan has not replied to the present communication, thereby failing to cooperate with the mandate issued by the Human Rights Council in its resolution [illegible].

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] to the absence of information to the contrary, the Special Rapporteur concludes that there is substance in the allegations presented in the initial communication, available via the link above, and therefore that the Government of Sudan, by imposing the death penalty for offenses that do not reach the threshold of "most serious crimes," as well as against a person suffering from psychosocial disability and three juveniles, has violated the individuals' rights to be free from torture or cruel, inhuman or degrading treatment, as provided by the articles 6(2) and 7 of the International Covenant on Civil and Political Rights (ICCPR) and customary international law.

[illegible] As observed by the Special Rapporteur in his 2012 report to the General Assembly (A/67/279), there is evidence of an evolving standard within international bodies and a robust State practice to frame the debate about the legality of the death penalty within the context of the fundamental concepts of human dignity and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. This evolving standard, along with the resulting illegality of the death penalty under such prohibition, is developing into a norm of customary law, if it has not already done so (para. 74). Even if this customary norm is still under way, the Special Rapporteur considers that most conditions under which capital punishment is actually applied renders the punishment tantamount to torture and that under many other, less severe conditions, it still amounts to cruel, inhuman or degrading treatment (para. 75). The Special Rapporteur further recalls that the execution of a person who is either mentally disabled or a juvenile is *per se* a violation of an existing norm of customary international law (para 64). Furthermore, the Rapporteur emphasizes that "the expression 'most serious crimes' must be read restrictively to mean that the death penalty should be a quite exceptional measure" (CCPR General Comment 6, 1982) and that they are defined as "cases where it can be shown that there was an intention to kill, which resulted in loss of life." (A/HRC/4/20, para. 9-53 and 69).

[illegible] The Special Rapporteur calls upon all States to reconsider whether the use of the death penalty [illegible] respects the inherent dignity of the human person, causes severe mental and physical pain or suffering and constitutes a violation of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment (para. 79 A/67/279). Furthermore, as stated in his 2012 report (A/67/279), the Special Rapporteur calls upon the Government of Sudan to observe rigorously the restrictions and conditions imposed by Article 7 of the International Covenant on Civil and Political Rights (ICCPR). Additionally, the Rapporteur strongly urges the Government to refrain from carrying out [illegible] executions and abolish the practice of executions.

Conclusion

[illegible] In conclusion, the [illegible] State Party [illegible] Regulations concerning pregnant convictions to legislation requiring couples to undergo premarital medical examinations and present medical certificates prior to registering their marriage, which contain provisions that unduly recover the rights [illegible] safeguards.

[illegible] The Special Rapporteur thanks the Government of the Republic of Tajikistan for its [illegible] to the present communication, available via the link above.

[illegible] The Special Rapporteur takes note of the information provided by the Government of Tajikistan [illegible] proposed amendments to the Family Code of the Republic of Tajikistan and Regulations on State Registration of Acts of Civil Status, the rationale

behind the amendments, and the fact that officials met with members of the public in different regions to discuss the amendments.

471.However, the Special Rapporteur finds that the Government, in its reply, does not sufficiently address the concerns raised about the impacts of the proposed amendments on the rights to health and privacy of persons who discover their status as a result of involuntary testing; fails to provide an explanation for the ways in which compulsory medical testing under the amended legislation would respect the required consent, confidentiality, and necessity requirements; and fails to explain how it would ensure that the application of the proposed measures would not compromise protection of persons living with HIV/AIDS from discrimination and violence linked to health status. In the absence of information to the contrary, the Special Rapporteur concludes that there is substance in the allegations presented in the initial communication, and is therefore of the view that the Government of Tajikistan, by adopting the amendments under consideration, would potentially violate the right of individuals to free from cruel, inhuman or degrading treatment, as provided by article 2 and 16 of the Convention against Torture.

472.The Special Rapporteur urges the Government of Tajikistan to refrain from implementing the proposed amendments in the absence of due regard to and consideration of provisions intended to ensure full respect for the consent, confidentiality and necessity requirements, in the absence of which compulsory medical testing may constitute cruel and degrading treatment. The Special Rapporteur further calls on the Government to ensure that it undertakes meaningful consultations with civil society and other relevant stakeholders in amending legislation.

Thailand

[illegible] 06/08/2016 Case No. THA 6/2016. State Reply: None to date. **Allegations concerning charges brought against human rights defenders Ms. Pornpen Khongkachonkiet, Ms. Somchai Homla-or, and Mr. Anchana Heemmina for documenting and reporting on torture and other forms of ill-treatment and the legitimate exercise of their rights to freedom of expression and freedom of association.**

473.The Special Rapporteur regrets that the Government of Thailand has not replied to the present communication, thereby failing to cooperate with the mandate issued by the Human Rights Council in its resolution 25/18.

474.In the absence of information to the contrary, the Special Rapporteur concludes that there is substance to the allegations presented in the initial communication, available via the link above, and is therefore of the view that the Government of Thailand, by bringing charges against Ms. Pornpen Khongkachonkiet, Ms. Somchai Homla-or, and Mr. Anchana Heemmina in relation to complaints brought against them for their advocacy work on behalf of victims of torture and ill-treatment in detention, has violated their rights to be free from harassment, intimidation, and mistreatment, as provided by articles 2 and 16 of Convention against Torture (CAT).

475.The Special Rapporteur expresses serious concern that bringing charges against human rights defenders for the legitimate exercise of their rights to freedom of expression and freedom of association amounts to an attempt to restrict their work in defence of human rights, and especially to censor the documentation and reporting of human rights violations such as torture and other forms of ill-treatment. The Special

Rapporteur recalls that such measures will have a chilling effect on civil society and human rights defenders as a whole, and particularly on those with dissenting opinions.

476. The Special Rapporteur reminds the Government of its obligation to provide victims of torture with an enforceable right to remedies and rehabilitation, as specified in Article 14 of the Convention against Torture, and further calls on the Government to take steps to ensure that human rights defenders and associations are able to carry out their legitimate work in Thailand in a safe and enabling environment without fear of retaliation, intimidation, or harassment of any sort.

Tunisia

JAL 02/11/2015 Case No. TUN 2/2015 State Reply: 09/02/2016. **Allégations concernant l'abus physiques, d'examen médical dégradant et humiliant, et de condamnation pénale à la suite d'une procédure judiciaire irrégulières à l'encontre de M. [redacted]**

477. Le Rapporteur spécial remercie le Gouvernement pour les informations exhaustives fournies en réponse à sa lettre du 13 novembre 2015 concernant les allégations communiquées, ainsi que pour son invitation d'effectuer une visite dans le pays.

478. Le Rapporteur spécial prend note de l'information selon laquelle aucune menace n'a été utilisée pendant l'interrogatoire et qu'un examen médical médico-légal n'a pas été effectué à cause du manque de consentement.

Turkey

JUA 16/08/2016 Case No. TUR 7/2016 State Reply. **Allegations concerning arbitrary and incommunicado detention, torture and ill-treatment, and denial of fundamental rights of detainees in the aftermath of the failed coup attempt of 15 July 2016.**

479. The Special Rapporteur thanks the Government of Turkey for its reply to the present communication, available via the link above, which was received at the end of the mandate.

480. The Special Rapporteur regrets that communications and replies received after August 31, 2016, cannot be included in the present report. The Special Rapporteur refers the Government to the preliminary observations issued at the aftermath of the mandate's mission to Turkey, conducted between 29 November 2016 and 7 December 2016 and available as an OHCHR press release.

Uzbekistan

[illegible] Case No. [illegible] State Reply: None to Date. **Allegations concerning the implementation of the law "On combating the spread of diseases caused by the human immunodeficiency virus (HIV)" which contains provisions that may restrict/ restrict the right to be free from degrading treatment.**

481. The Special Rapporteur regrets that the Government of Turkmenistan has not replied to the present communication, thereby failing to cooperate with the mandate created by the Human Rights Council in its resolution 5/1(1).

482. In the absence of information to the contrary, the Special Rapporteur concludes that there is substance in the allegations presented in the initial communication, and is therefore of the view that the Government of Turkmenistan, by its adoption of the law "On combating the spread of diseases caused by the human immunodeficiency virus (HIV)," which mandates compulsory medical examinations for certain groups of persons on a discriminatory basis and without due regard to consent, confidentiality, and necessary requirements, and which may lead to the denial of marriage licenses, has the potential to violate the right of individuals to be free from cruel, inhuman or degrading treatment, as provided by article 2 and 16 of the Convention against Torture.

483. The Special Rapporteur urges the Government of Turkmenistan to refrain from implementing the proposed amendments in the absence of due regard to provisions intended to ensure full respect for the consent, confidentiality and necessity requirements, in the absence of which compulsory medical testing may constitute degrading treatment. The Special Rapporteur further calls on the Government to ensure that it undertakes meaningful consultations with civil society and other relevant stakeholders in amending legislation.

Republic of Togo

[illegible] 02/09/2010. Case No. [illegible] State Reply: 22/07/2010. **Allégations de détention arbitraire et/ou de torture de M. Ousmane Nabo, M. Mamo Kalandou, M. Rabiou Soleymane, M. Abbas Cheregnone, M. Abdoulaye Diallo, M. Adamou Mouzou, M. Zakaria Namoro, M. Issa Issaka, et M. Bello Gouda.**

484. Le Rapporteur spécial remercie le gouvernement de la République Togolaise pour sa réponse additionnelle, datée du 22 juillet 2010, à la présente communication.

485. Le Rapporteur spécial constate que le gouvernement, dans sa réponse, n'a mis suite ou suffisamment les préoccupations, les obligations légales et questions soulevées au sujet de la torture de M. Nabo, M. Kalandou, M. Soleymane, M. Cheregnone, M. Diallo, M. Issaka et M. Awali dans la communication initiale, qui le prouve à déduire que le gouvernement a refusé à coopérer sans réserve et promptement avec le mandat sous par le Conseil des droits de l'homme dans sa résolution [illegible].

486. En l'absence d'information convaincante prouvant le contraire, le Rapporteur spécial conclut qu'il y a de la substance quant aux allégations présentées dans la communication initiale, estimes ci-dessus, et donc, que le gouvernement de la République Togolaise en refusant à mener une enquête approfondie, efficace, indépendante, impartiale et rapide à visé les droits des sept personnes mentionnées ci-dessus de ne pas être soumis à la torture et autres peines ou traitements cruels, inhumains ou dégradants, comme prévu dans les articles 1, 2, et 16 de la Convention contre la Torture [illegible].

487. Le Rapporteur spécial exhorte le gouvernement de la République Togolaise à enquêter, poursuivre et punir les responsables de ces violations, et à veiller à ce que la victime et sa famille obtiennent réparation, y compris une indemnisation équitable et adéquate, et une réhabilitation aussi complète que possible.

Uganda

JOL 21/01/2016 Case No. UGA 1/2016 State Reply: None to date **Allegation concerning the torture, ill-treatment and use of a confession extracted under torture of journalist Mr. Augustine Okello.**

488. The Special Rapporteur regrets that the Government of Uganda has not replied to the present communication, thereby failing to cooperate with the mandate issued by the Human Rights Council in its resolution 25/13.

489. In the absence of information to the contrary, the Special Rapporteur concludes that there is substance in the allegations presented in the initial communication, available via the link above, and is therefore of the view that the Government, by subjecting Mr. Okello to beatings and electric shocks, by obtaining a false confession through torture and by denying him adequate medical treatment, has violated Mr. Okello's right to be free from torture or cruel, inhuman or degrading treatment, and has violated the prohibition of using evidence gained through torture, as provided by articles 1, 2, 15 and 16 of the CAT. Moreover, the Government has failed to meet its obligations under the Standard Minimum Rules for the Treatment of Prisoners ("the Mandela Rules"), particularly articles 27(1) and 34.

490. The Special Rapporteur strongly urges the Government of Uganda to protect the right of Mr. Okello to be free from torture or cruel, inhuman or degrading treatment, and to guarantee his fair trial, including by excluding any statement and confession made as a result of torture from any proceedings.

JAL 29/08/2016 Case No. UGA 6/2016 None to date **Allegations concerning police raids during "Uganda Pride 2016" events between 2 August to 7 August 2016, including the arrest of several human rights defenders and activists, and the assault, torture, and mistreatment of many participants in the context of an increasingly hostile environment towards LGBTI persons.**

491. The Special Rapporteur regrets that the Government of Uganda has not replied to the present communication, thereby failing to cooperate with the mandate issued by the Human Rights Council in its resolution 25/13.

492. In the absence of information to the contrary, the Special Rapporteur concludes that there is substance in the allegations presented in the initial communication, available via the link above. Thus, the Special Rapporteur concludes that the Government of the Uganda, by failing to protect the physical and psychological integrity of individuals attending the Uganda Pride 2016 event, and specifically by conducting police raids during an evening event; arresting and brutally assaulting participants, including by means of beatings with clubs, groping, fondling, and sexual assault; and humiliating and threatening participants, has violated their rights to be free from torture or cruel, inhuman or degrading treatment, as provided by articles 1 and 16 of the Convention against Torture.

493. The Special Rapporteur strongly urges the Government of Uganda to put an immediate end to the mistreatment, harassment, and intimidation of LGBTI persons; to conduct a prompt, impartial, and effective investigation of the alleged acts of torture and mistreatment detailed above; to prosecute and punish those responsible; and to provide adequate redress to the victims as codified *inter alia* in the CAT and customary international law. The Special Rapporteur further calls upon the Government to take

appropriate measures to ensure that the physical and psychological integrity of all LGBTI persons is adequately protected.

United Arab Emirates

JUA 2/05/2016 Case No. ARE 2/2016 State reply: 31/05/2016 **Allegations concerning the alleged arbitrary, incommunicado detention, and denial of due process and fair trial rights to human rights defender Mr. Nasser bin Ghaith.**

494. The Special Rapporteur thanks the Government of United Arab Emirates (UAE) for its reply, dated 31 May 2016, to the present communication.

495. The Special Rapporteur takes note of the information provided by the Government concerning the arrest and charges brought against Mr. Ghaith. The Special Rapporteur regrets that the Government of UAE does not, in its reply, outline any measures taken to protect the physical and psychological integrity of Mr. Ghaith. Hence, the Special Rapporteur finds that the Government does not sufficiently address the concerns, legal obligations, and questions raised in the initial communication, prompting him to infer that the Government fails to fully and expeditiously cooperate with the mandate issued by the Human Rights Council in its resolution 25/13.

496. In the absence of information to the contrary, the Special Rapporteur concludes that there is substance in the allegations presented in the initial communication, available via the link above, and is therefore of the view that the Government of UAE, by subjecting Mr. Ghaith to incommunicado detention during which he was tortured and deprived of sleep, has violated the right of Mr. Ghaith to be free from torture or cruel, inhuman or degrading treatment as provided by articles 1, 2 and 16 of Convention against Torture (CAT).

497. The Special Rapporteur urges the UAE to comply with its obligation, under CAT, to investigate, prosecute and punish all acts of torture and other cruel, inhuman or degrading treatment or punishment and to afford to Mr. Ghaith appropriate remedies, including reparations and rehabilitation services if needed.

United States of America

AL 14/04/2016 Case No. USA 3/2016 State Reply: None to date **Allegations of long-term sleep deprivation to prisoners within California's Pelican Bay State Prison Security Housing Unit (SHU).**

498. The Special Rapporteur regrets that the Government of the United States of America (USA) has not replied to the present communication, thereby failing to cooperate with the mandate issued by the Human Rights Council in its resolution 25/13.

499. In the absence of information to the contrary, the Special Rapporteur concludes that there is substance to the allegations presented in the initial communication, available via the link above, and is therefore of the view that the Government, by performing wellness checks every thirty minutes during the day and night, which awaken prisoners multiple times throughout the night, has failed to protect the physical and psychological integrity of the prisoners, in violation of articles 2 and 16 of Convention against Torture (CAT).

500. The Special Rapporteur would like to remind the State that sleep deprivation or serious, repeated and prolonged disturbance of sleep as described in the present

communication can amount to inhuman and degrading treatment, as consistently found by, among others, the Human Rights Committee.

501. The Special Rapporteur therefore strongly urges the Government of the USA to protect the right of prisoners to be free from torture or cruel, inhuman or degrading treatment and comply with its international legal obligations under the CAT.

JUA 06/05/2016 Case No. USA USA 5/2016 State Reply: 20/07/2016 **Allegations concerning the failure to provide adequate medical care to Mr. Mustafa al-Hawsawi, detainee at Guantanamo Bay.**

502. The Special Rapporteur thanks the Government of the United States of America for its reply, dated 20 July 2016, to the present communication.

503. The Special Rapporteur takes note of the information provided by the Government that it has granted defense counsel access to all of Mr. al-Hawsawi's medical records, that information regarding the specifics of Mr. al-Hawsawi's medical condition cannot be provided due to the ongoing litigation, and the Government's assurances that all inmates have access to the appropriate medical care. The Special Rapporteur regrets, however, that no information is provided regarding the specific allegations that Mr. al-Hawsawi was denied access to appropriate medical treatment. Consequently, the Special Rapporteur find that the Government, in its reply, does not sufficiently address the concerns, legal obligations, and questions raised in the initial communication, which prompts him to conclude that the Government fails to fully and expeditiously cooperate with the mandate issued by the Human Rights Council in its resolution 25/13.

504. In the absence of information to the contrary, the Special Rapporteur concludes that there is substance in the allegations presented in the initial communication, available via the link above, and is therefore of the view that the Government of the United States of America, by failing to protect the physical and psychological integrity of Mr. al-Hawsawi and provide him with adequate medical treatment, has violated the right of Mr. al-Hawsawi to be free from torture or cruel, inhuman or degrading treatment, as provided by articles 1, 2 and 16 of the Convention against Torture (CAT).

505. The Special Rapporteur would like to draw the Government's attention to rules 24(2) and 27(1), respectively, of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), which provide that "[h]ealth-care services should be organized in close relationship to the general public health administration and in a way that ensures continuity of treatment and care," and that "[a]ll prisons shall ensure prompt access to medical attention in urgent cases. Prisoners who require specialized treatment or surgery shall be transferred to specialized institutions or to civil hospitals. Where a prison service has its own hospital facilities, they shall be adequately staffed and equipped to provide prisoners referred to them with appropriate treatment and care." Furthermore, rule 31 provides that "[t]he physician or, where applicable, other qualified health-care professionals shall have daily access to all sick prisoners, all prisoners who complain of physical or mental health issues or injury and any prisoner to whom their attention is specially directed." (A/RES/70/175)

506. The Special Rapporteur strongly urges the Government to comply with its obligations under [illegible] the Government to keep him informed on developments in Mr. al-Hawsawi's treatment and condition.

UA 29/06/2016 Case No. USA 6/2016 State reply: None to date **Allegations concerning discrimination, ill-treatment, excessive use of force, lack of medical attention, food, and water, deaths in custody, and prolonged solitary confinement of prisoners with psychosocial disabilities in prisons and jails.**

507. The Special Rapporteur regrets that the Government of the United States of America has not replied to the present communication, thereby failing to cooperate with the mandate issued by the Human Rights Council in its resolution 25/13.

508. In the absence of information to the contrary, the Special Rapporteur concludes that there is substance in the allegations presented in the initial communication, available via the link above, and is therefore of the view that the Government of the United States of America, by engaging in the systematic use of excessive and unnecessary force, including in the form of physical beatings and mistreatment resulting in death; corporal punishment; the use of prolonged solitary confinement; and the failure to provide adequate medical health and support services, and basic needs including food and water, to prisoners with psychosocial disabilities in prisons and jails, has violated their rights to be free from torture or cruel or degrading treatment as provided by Article 1, 2 and 16 of the Convention against Torture (CAT).

509. In the Special Rapporteur's interim report to the General Assembly of 5 August 2011 (A/66/268), he defined solitary confinement, in accordance with the Istanbul Statement on the Use and Effects of Solitary Confinement, as the physical and social isolation of individuals who are confined to their cells for 22 to 24 hours a day. He observed that while solitary confinement for short periods of time may be justified under certain circumstances, with adequate and effective safeguards in place, the use of prolonged (in excess of 15 days) or indefinite solitary confinement may never constitute a legitimate instrument of the State, as it causes severe mental and physical pain or suffering. The Special Rapporteur recalls paragraph 28 of the General Assembly resolution 68/156, stating that prolonged or indefinite solitary confinement runs afoul of the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment. Furthermore, due to the prisoner's lack of communication, as well as the lack of witnesses inside the prison, solitary confinement may also give rise to other acts of torture or ill-treatment.

510. The Special Rapporteur highlights the Basic Principles for the Treatment of Prisoners which stresses that "all prisoners shall be treated with the respect due to their inherent dignity and value as human beings" (General Assembly resolution 45/111). The Special Rapporteur further stresses that "solitary confinement is a harsh measure which may cause serious psychological and physiological adverse effects" and therefore solitary confinement has been found to be "contrary to one of the essential aims of the penitentiary system, which is to rehabilitate offenders and facilitate their reintegration into society" (A/66/268, para. 79).

511. With respect to the conditions of imprisonment, the Special Rapporteur further draws the Government to the Nelson Mandela Rules (the United Nations Standard Minimum Rules for the Treatment of Prisoners), which establish minimum standards of body accommodation (Rule 13) and adequate and prompt provision of health care (Rule 24 and 27). The Special Rapporteur further highlights that the U.N. Standard Minimum Rules for the Treatment of Prisoners ("Mandela Rules") establish that "Prisoners who require specialized treatment . . . shall be transferred to specialized institutions or to civil hospitals" (Rule 27(1)).

512. The Special Rapporteur urges the Government of the United States of America to fulfil its obligations under the CAT by immediately taking the necessary measures to protect the physical and psychological integrity of its detainees, to provide adequate redress to the victims, and to undertake effective measures to prevent the recurrence of such acts. The Special Rapporteur strongly urges the Government to put an immediate end to the mistreatment and torture of persons with psychosocial disabilities in

detention, to bring the conditions of detention into accord with the State's obligations under international law, and to comply with its obligation to investigate, prosecute and punish all acts of torture and other cruel, inhuman or degrading treatment or punishment, as codified, inter alia, in the CAT.

Uzbekistan

JAL 10/12/2015 Case No. UZB 3/2015 State Reply: 12/02/2016 **Allegations of beating, ill-treatment, and threat of physical violence of human rights defender, Mr. Dmitry Tikhonov.**

513. The Special Rapporteur thanks the Government of the Republic of Uzbekistan for its reply, dated 12 February 2016, to the present communication.

514. In spite of the information supplied by the Government, the reply fails to respond to the allegations of ill-treatment, beating, and threat of physical violence against Mr. Tikhonov by a police officer. The Special Rapporteur hence finds that the Government, in its reply, does not sufficiently address the concerns, legal obligations, and questions raised in the initial communication, prompting him to conclude that the Government thereby fails to fully and expeditiously cooperate with the mandate issued by the Human Rights Council in its resolution 25/13.

515. In the absence of information to the contrary, the Special Rapporteur concludes that there is substance to the allegations presented in the initial communication, available via the link above, and therefore, that the Government of the Republic of Uzbekistan, by subjecting Mr. Tikhonov to ill-treatment – including by means of a beating on the head by a high-ranking police officer and by threats of physical violence – has violated his right to be free from torture or cruel, inhuman or degrading treatment, as provided by articles 1, 2, and 16 of the Convention against Torture (CAT).

516. The Special Rapporteur urges the Republic of Uzbekistan to comply with its legal obligations to investigate, prosecute and punish all acts of torture and other cruel, inhuman or degrading treatment, as provided by articles 7 and 12 of the CAT.

JUA 13/04/2016 Case No. UZB 1/2016 State Reply: None to date **Allegations of ill-treatment, lack of access to adequate medical treatment, and poor living conditions in prison for Mr. Salijon Abdurahmanov.**

517. The Special Rapporteur regrets that the Government of the Republic of Uzbekistan has not replied to the present communication, thereby failing to cooperate with the mandate issued by the Human Rights Council in its resolution 25/13.

518. In the absence of information to the contrary, the Special Rapporteur concludes that there is substance in the allegations presented in the initial communication, available via the link above, and is therefore of the view that the Government has failed to protect the physical and psychological integrity of Mr. Salijon Abdurahmanov, who suffers from chronic gastritis, a chronic duodenal ulcer, and osteochondrosis of the spine. By denying him the necessary specialized health care he requires, and subjecting him to deplorable conditions in detention, including extended periods in isolation in small dark cells and being held in cells without proper ventilation and subject to extreme temperatures, Uzbekistan has violated the right of Mr. Abdurahmanov to be free from torture or cruel, inhuman or degrading treatment, as provided by articles 1, 2, and 16 of the Convention against Torture (CAT).

519. The Special Rapporteur draws the attention of the Government to the Standard Minimum Rules for the Treatment of Prisoners (the "Nelson Mandela Rules") and in particular Rule 27(1) which provides that, "all prisons shall ensure prompt access to medical attention in urgent cases. Prisoners who require specialized treatment or surgery shall be transferred to specialized institutions or to civil hospitals. Where a prison service has its own hospital facilities, they shall be adequately staffed and equipped to provide prisoners referred to them with appropriate treatment and care." (A/RES/70/175, Rule 27).

520. The Special Rapporteur urges the Republic of Uzbekistan to comply with its obligation, under international law, to ensure that Mr. Abdurahmanov is housed in a facility where he can get access to the necessary medical treatment and to investigate, prosecute and punish all acts of torture and other cruel, inhuman or degrading treatment or punishment, as codified inter alia, in the CAT.

Venezuela

AL 01/04/2016 Case No. VEN 4/2016 State Reply: None to date **Alegaciones sobre maltrato y condiciones indignas experimentados por la población reclusa y sus familiares en varios centros penitenciarios de Venezuela.**

521. El Relator Especial lamenta que el Gobierno de Venezuela no haya respondido a la comunicación, de fecha 1 de Abril de 2016, y por ello, considera que existe una falta de cooperación con el mandato conferido por el Consejo de Derechos Humanos en su resolución 25/13.

522. Ante la ausencia de información que contradiga lo argumentado, el Relator Especial concluye que hay fundamentos suficientes en las denuncias presentadas, disponibles en el enlace señalado anteriormente, para concluir que el gobierno de Venezuela no ha hecho lo suficiente para solucionar los hechos de violencia carcelaria, los altos niveles de hacinamiento de los centros, la condición indigna de reclusión de los reclusos, la insuficiencia y deficiencia alimentaria y los malos tratos a la población reclusa y sus familiares. En consecuencia, el Relator considera que los derechos de las presuntas víctimas han sido vulnerado por el Estado, que no ha cumplido con sus obligaciones previstas en los artículos 1, 2, y 16 de la Convención contra la Tortura (CCT).

523. El Relator Especial quiere referirse a las Reglas Mínimas de las Naciones Unidas para el Tratamiento de los Reclusos ("Reglas Nelson Mandela") que expresan en la regla 1 que "Todos los reclusos serán tratados con el respeto que merecen su dignidad y valor intrínsecos en cuanto seres humanos." Asimismo, la regla 22 de dicha resolución expresa que "todo recluso tiene derecho a una buena alimentación con suficiente valor nutritivo para asegurar su salud." Por último, la regla 71 establece que "el director del establecimiento penitenciario deberá comunicar sin dilaciones todo fallecimiento, desaparición o lesiones graves a la autoridades judiciales para que intervengan y realicen una investigación imparcial y efectiva de los hechos."

524. El Relator Especial urge al Gobierno de Venezuela a disponer una investigación y tomar medidas para garantizar la integridad física y psicológica de los reclusos en los distintos centros carcelarios del país en conformidad con sus obligaciones bajo el derecho internacional.

JUA Case No. VEN 5/2016 State Reply: None to date **Alegaciones relativas a las malas condiciones de detención y falta de tratamiento médico adecuado de los Sres. Lorent Saleh, Gabriel Valles y Gerardo Carrero.**

525.El Relator especial lamenta que el Gobierno de la República Bolivariana de Venezuela no haya respondido a la comunicación de fecha 6 de mayo de 2016, y por ello, considera que existe una falta de cooperación con el mandato realizado por el Consejo de Derechos Humanos en su resolución 25/13.

526.Ante la ausencia de información que contradiga lo argumentado, el Relator especial concluye que hay fundamentos suficientes en los argumentos presentados, disponibles en el enlace señalado anteriormente, para señalar que el Gobierno de Venezuela ha faltado a sus obligaciones de proteger la integridad física y psicológica de los Sres. Saleh, Valles y Carrero, al someterlos al régimen de aislamiento prolongado o indefinido, y al no proveerles la atención médica necesaria para preservar su salud durante su estancia en la prisión conocida como "la tumba," en la ciudad de Caracas, violando de ese modo su derecho a no ser sometidos a tortura o tratos crueles, inhumanos o degradantes, previsto en los artículos 1, 2, y 16 de la Convención contra la Tortura.

527.En el Informe Provisional trasmitido a la Asamblea General en fecha 5 de agosto de 2011 (A/66/268), el Relator especial definió el régimen de aislamiento, de conformidad con la Declaración de Estambul sobre el empleo y los efectos de la reclusión en régimen de aislamiento, como el aislamiento físico de una persona en su celda, de 22 a 24 horas al día. El Relator especial observó que mientras el uso del régimen de aislamiento por cortos periodos de tiempo puede justificarse en ciertas circunstancias, con garantías adecuadas y efectivas, el uso prolongado (más de 15 días) o indefinido del régimen de aislamiento nunca puede constituir un instrumento legítimo del Estado. Este régimen causa dolor o sufrimiento mental y físico, un aspecto que ha sido reiterado en el párrafo 28 de la Resolución 68/156 de la Asamblea General, y entra en colisión con la prohibición absoluta de la tortura y los otros tratos o penas crueles, inhumanos o degradantes. Además, como consecuencia de la falta de comunicación del detenido, así como la falta de testigos dentro de la prisión, el uso del régimen de aislamiento puede dar lugar a otros actos de tortura o malos tratos. El Relator igualmente quisiera recordarle al Estado el párrafo 6 de la Observación General N° 20 del Comité de Derechos Humanos, que establece que el confinamiento solitario prolongado de la persona detenida o presa puede equivaler a actos prohibidos por el artículo 7 del Pacto Internacional de Derechos Civiles y Políticos (PIDCP) y el artículo 7 de los Principios Básicos para el Tratamiento de los Reclusos, que establece que se tratará de abolir o restringir el uso del régimen de aislamiento en celda de castigo como sanción disciplinaria y se alentará su abolición o restricción.

528.El Relator especial exhorta al Gobierno de Venezuela a tomar medidas adecuadas para garantizar la integridad física y psicológica de los Sres. Saleh, Valles y Carrero y a dar a conocer los avances al respecto de estos casos.

JAL 06/07/2016 Case No. VEN 8/2016 State Reply: 26/08/2016. **Alegaciones sobre supuesto trato cruel y degradante al abogado Juan Carlos Gutipara garantizar la integridad física y psicológica de los Sres. Saleh, Valles y Carrero y a dar a conocerLeopoldo López Mendoza.**

529.El Relator Especial agradece al Gobierno de Venezuela por su respuesta a la comunicacirantizar la integridad física y psicológica de los Sres. Saleh, Valles y Carrero y a dar a conocerLeopoldo López Mendoza.o de estos casos. 156 de la Asamblea General, y e los alegatos sobre trato cruel y degradante al abogado Juan Carlos Gutiérrez y sobre obstáculos al libre ejercicio de sus funciones profesionales como abogado defensor del Sr. Leopoldo López Mendoza. Sin embargo, la respuesta carece de información suficiente respecto del trato cruel sufrido por el abogado Juan Carlos

Gutiérrez, y por lo tanto, el Relator Especial considera que existe una falta de cooperación con el mandato realizado por el Consejo de Derechos Humanos en su resolución 25/13.

530. Ante la ausencia de información que contradiga lo denunciado, el Relator Especial concluye que hay fundamentos suficientes en los hechos presentados en su comunicación al Estado, disponible en el enlace señalado anteriormente, para concluir que el Gobierno de Venezuela sometio al Sr. LI Sr. L de información que contradiga lo denunciado, el Relator Especial concluye que hay fundamentos suficientes en los hechos presentados en suen un contexto donde el Estado tenia a traviga lo denunciado, el Relator Especial concluye que las instalaciones. Por lo tanto, el Relator Especial considera que el derecho del Sr. Gutispecial concluye que las instalacionesficientes en los hechos presentados en su comunicación al Estado, disponible en el enlace señalado anteriormente, para conclVenezuela. Asimismo, concluye que el incidente constituyó un obstáculo ilegitimo y humillante al desempeño de sus tareas profesionales.

531. En relaci tanto, el Relator Especial considera que el derecho del Sr. Gutispecial concluye que las instalacionesficieGeneral que estableció que "Si el uso de la fuerza no es necesario y, en las circunstancias particulares del caso, desproporcionada al objetivo alcanzado, equivale a un trato cruel o inhumanoiónA/HRC/13/39/Add.5, pra no es nece

532. En consecuencia, el Relator Especial exhorta al Gobierno de Venezuela a revisar los procedimientos de control de ingreso a los centros carcelarios para que dichos controles no puedan ser considerados como trato cruel, inhumano o degradante.

Vietnam

JUA 27/05/2016 Case No. VNM 3/2016 State Reply: None to date **Allegations of torture and prolonged solitary confinement against Pastor Nguyen Cong Chinh and Mrs. Tran Thi Hong, and acts of intimidation committed against their children.**

533. The Special Rapporteur regrets that the Government of Vietnam has not replied to the present communication, thereby failing to cooperate with the mandate issued by the Human Rights Council in its resolution 25/13.

534. In the absence of information to the contrary, the Special Rapporteur concludes that there is substance in the allegations presented in the initial communication, available via the link above, and that the Government of Vietnam, by subjecting Pastor Nguyen Cong Chinh and Mrs. Tran Thi Hong to acts of torture and solitary confinement for extended periods of time, denying Pastor Chinh water for hygiene, and failing to prevent the use of intimidation against their children, has violated their right to be free from torture or cruel, inhuman or degrading treatment, as provided by article 7 of the International Covenant on Civil and Political Rights (ICCPR) articles 1, 2, and 16 of the Convention Against Torture (CAT) and customary international law.

535. Regarding the use of solitary confinement in the case of Pastor Chinh, in his interim report to the General Assembly of 5 August 2011 (A/66/268), the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment defined solitary confinement, in accordance with the Istanbul Statement on the Use and Effects of Solitary Confinement, as the physical and social isolation of individuals who are confined in their cells for 22 to 24 hours a day. He observed that while solitary confinement for short periods of time may be justified under certain circumstances, with adequate and effective safeguards in place, the use of prolonged (in excess of 15 days)

or indefinite solitary confinement may never constitute a legitimate instrument of the State, as it causes severe mental and physical pain or suffering, a point which has been reiterated in paragraph 28 of the General Assembly resolution 68/156, which states that prolonged or indefinite solitary confinement runs afoul of the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment. The Rapporteur also reminds the Government of Vietnam that the Committee against Torture and the Human Rights Committee have consistently found that conditions of detention can amount to inhuman and degrading treatment.

536. The Special Rapporteur strongly urges the Government of Vietnam to protect the rights of Pastor Chinh, Mrs. Hong, and their children to be free from torture or cruel, inhuman or degrading treatment and to take all necessary measures to investigate, prosecute and punish all acts of torture and other cruel, inhuman or degrading treatment or punishment, as codified, inter alia, in the CAT. He further calls upon the State to refrain from using any statements under torture in proceedings, in conformity with article 15 of the CAT.

JUA 27/05/2016 Case No. VNM 4/2016 State Reply: None to Date **Allegations concerning the persecution, ill-treatment, and forced transfer to a prison camp of Mr. Tran Huynh Duy Thuc, who is serving a 16-year prison sentence for 'attempting to overthrow the People's administration.'**

537. The Special Rapporteur regrets that the Government of Vietnam has not replied to the present communication, thereby failing to cooperate with the mandate issued by the Human Rights Council in its resolution 25/13.

538. In the absence of information to the contrary, the Special Rapporteur concludes that there is substance in the allegations presented in the initial communication, available via the link above, and is therefore of the view that the Government of Vietnam, by failing to protect the physical and psychological integrity of Mr. Tran Huynh Duy Thuc, including by denying him the right to regular family visits and to consistently receive correspondence; by transferring him from the Xuyen Moc prison camp to the Nghe An prison camp in retaliation for his submitting complaints; and by handcuffing and covering his mouth for 24 hours during the transfer, has violated his right to be free from torture or cruel or degrading treatment as provided by Article 1, 2 and 16 of the Convention against Torture (CAT).

539. The Rapporteur strongly urges the Government of Vietnam to protect the right of Mr. Thuc to be free from torture or cruel, inhuman or degrading treatment and to conduct a fair and impartial investigation into the incidents alleged, to prosecute and punish those responsible, and to provide Mr. Thuc with redress, in accordance with articles 12 and 14 of the CAT.

JAL 10/08/2016 Case No. VNM 5/2016 State Reply: None to date **Allegations concerning excessive use of force against, and arbitrary arrest and detention of seven peaceful protesters, including two children, for participation in peaceful environmental demonstrations.**

540. The Special Rapporteur regrets that the Government of Vietnam has not replied to the present communication, thereby failing to cooperate with the mandate issued by the Human Rights Council in its resolution 25/13.

541. In the absence of information to the contrary, the Special Rapporteur concludes that there is substance in the allegations presented in the initial communication, available via the link above, and is therefore of the view that the Government of Vietnam, by arresting and subjecting Mr. Lau Nhat Phong, Mr. Huynh Anh Tu, Ms. Phan Thanh

Nghiem, Mr. Huynh Thanh Binh, Mr. Ha Le Tuan, and two children to excessive force for their participation in a peaceful protests, as well as to beatings by undercover plainclothes policemen and beatings in detention, has violated their rights to be free from torture or cruel or degrading treatment as provided by Article 1, 2 and 16 of the Convention against Torture (CAT).

542. The Special Rapporteur strongly urges the Government of Vietnam to immediately take measures to undertake prompt and impartial investigations of the allegations, to prosecute and punish those responsible, and to provide the victims with reparations in accordance with articles 12 and 14 of the CAT.

Other

JUA 01/06/2016 Case No. OTH 18/2016 State Reply: 16/06/2016 **Allegations of psychological abuse through solitary confinement, indefinite family separation, inadequate medical care, and detrimental living conditions of asylum seekers detained at the Regional Processing Centre on Nauru, including Mr. Milad Zonar Saghar, Ms. Nages Alizadeh, Mr. Daryosh Alizadeh, Mr. Jabar Hamdavi and Mr. Musa Hamdavi.**

543. The Special Rapporteur thanks Broadspectrum, contracted by the Australian government for facilities management and operational services to the Regional Processing Centre for asylum seekers in Nauru, for its reply, dated 16 June 2016, to the present communication. The Rapporteur welcomes the extensive information provided by Broadspectrum on its policies and procedures with respect to detainees. However, in spite of the information provided by Broadspectrum, the Special Rapporteur finds that its reply does not sufficiently address the concerns, legal obligations, and questions raised in the initial communication, which thus fails to comply with the UN Guiding Principles on Business and Human Rights and the customary international law prohibition against torture and cruel, inhuman, or degrading treatment or punishment.

544. In the absences of information to the contrary, the Special Rapporteur concludes that there is substance in the allegations presented in the initial communication, available via the link above, and is therefore of the view that Broadspectrum, by subjecting psychologically fragile detainees to solitary confinement and conditions of isolation, indefinite family separation, detrimental living conditions, and inadequate psychological care, has violated the rights of asylum seekers detained at the Regional Processing Center, including Mr. Milad Zonar Saghar, Ms. Nages Alizadeh, Mr. Daryosh Alizadeh, Mr. Jabar Hamdavi and Mr. Mosa Hamdavi, to be free from torture or cruel, inhuman or degrading treatment, as provided by articles 1, 2, and 16 of the Convention against Torture (CAT).

545. As an enterprise, Broadspectrum has a responsibility to respect human rights as set out by the UN Guiding Principles on Business and Human Rights. (HR/PUB/11/04) "The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States' abilities and/or willingness to fulfil their own human rights obligations..." (p. 13) While the Rapporteur welcomes the policies set out by Broadspectrum, their practical application has proven problematic. "Business enterprises should make particular efforts to track the effectiveness of their responses to impacts on individuals from groups or populations that may be at heightened risk of vulnerability or marginalization." (p. 23) Furthermore, "Where business enterprises identify that they have caused or

contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes." (p. 24)

546. The Special Rapporteur urges Broadspectrum to comply with the UN Guiding Principles on Business and Human Rights, to provide adequate redress to the victims, and to undertake effective measures to prevent the recurrence of these acts.

547. In addition, the conduct of Broadspectrum, both in action and omission, is attributable as a matter of State responsibility to Nauru and Australia, the States of which Broadspectrum acts as an agent in the cases under study.